

**BEFORE NATIONAL GREEN TRIBUNAL, AT WESTERN ZONAL
BENCH PUNE
O.A. No. 100 of 2020**

UDAYSANKAR SAMUDRALA

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

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	<i>Ltd.</i> , Company Appeal (AT) (Insolvency) No. 936 of 2021 before.	

THROUGH



(NITESH RANJAN/ UTKARSHA SHARMA)

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Filed On: 28.04.2022
New Delhi

**BEFORE NATIONAL GREEN TRIBUNAL, AT WESTERN ZONAL
BENCH PUNE**

O.A. No. 100 of 2020

UDAYSANKAR SAMUDRALA

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

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WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT

The present application is filed under Section 14 of the NGT Act seeking intervention of the NGT to direct Respondent No. 1 to 5 to take appropriate actions to stop further construction, erection, development, or change of nature and character of the site of Funicular Ropeway Project at Jivdani Devi Temple done at the instance of Respondent No. 4.

SHORT LIST OF DATES

DATE	PARTICULARS	PAGE NO.
17.09.2009	EC obtained by Damodar Ropeways for Monocable pulsed fixed grip passenger ropeway project (stark difference between monocable project and funicular project) R-4 and R-5 wrongfully relying on this EC: - Annexure A/4 @ Pg 157 of the O.A. - Annexure A/5 @ 166 of O.A.	@137 of OA
16.09.2014	EC dated 17.09.2009 expired.	
Jan 2018	Funicular Ropeway project awarded to R-5/ Yashita Automotive Engineering Pvt. Ltd.	
12/02/2018	As per Clause 31 of the Affidavit in reply, admittedly Respondent no. 4 started work on Funicular Ropeway which was built on elevated tracks for which hundreds of towers are required for construction and destruction of environment is many times more than the earlier Monocable ropeway.	
July 2018	R-5 started construction without obtaining EC	

	Refer: 1. Photos of project (Annex A/6 @ Pg 170-172 of O.A.)(Annex H of Rejoinder (R-1) @ Pg. 391) (Annexure-1 of report of Respondent @ Pg 1023) 2. Balance sheets of 2017-20 (Annex A @ 18-46 of Rejoinder, (R-1)) 3. ToI newspaper @ 174 of O.A. 4. Article in Mumbai mirror stating trial run of project has started (Annex A/1 of OA @ 41) 5. Ticket (Annex G @ 390 of Rejoinder (R-1)) 6. Minutes of meetings of 30.12.2020 (Pg 60 of Rejoinder (R-1))	
30.09.2019	Applied for EC for funicular project - TOR states that EC is for future projects Refer: - Annex C of Rejoinder (R-1) (@ Pg. 63-379) - Annex D of Rejoinder (R-1) (@ Pg. 380) - Annexure A/2 (@ Pg. 42 of O.A.) - Annexure A/3 (@ Pg. 43 of O.A.) - Public hearing notice: Annex A/8 (@ Pg. 179 of OA)	
17/18.10.2019	Minutes of meetings of expert appraisal committee	Annexure A/5 @ 166 of O.A.
30.12.2020	Public hearing	Annexure B of Rejoinder @ Pg 47
01.03.2021	Application for EC	Annexure-C of Rejoinder @64
04.04.2021	Query rose by Member Secretary, Infrastructure & Miscellaneous Projects & CRZ committee, that whether construction has started without EC.	
05.05.2021	EC Application delisted as they did not give any reply.	Annexure E of Rejoinder, @Pg. 381
30.07.2021	Report submitted by MOEF&CC, Nagpur Office to the Member Secretary (Infra) MOEF & CC Delhi	

	stating that Funicular ropeway construction has started without obtaining the EC	
12.08.2021	2nd EC application by the Respondent no. 4, have they stated that MOEF Regional Officer Nagpur had visited site on 25/11/19 and observed that the construction was not in progress and submitted compliance report letter no. E-1087/RoN/2019-NGP/5987. But in fact, the construction work was never stopped.	
23.08.2021	Query raised by the member secretary, Infrastructure & Miscellaneous Projects & CRZ committee to provide Hon'ble NGT Order.	
23.09.2021	2nd EC application of the Respondent No. 4 also got delisted as it did not provide the required documents.	

Contentions of Respondent no. 1 in Counter Affidavit dated 01.06.2021

- The project is covered by item 7(g) of schedule of EIA notification 2006. [Para 7 @551]
- The project proponent i.e. Jivdani Passenger Funicular Ropeway at Virar, Maharashtra by M/s Shree Jivdani Devi Sansthan had applied for Terms of Reference with the Respondent vide proposal dated 30.09.2019 for implementation and operation of Jivdani Passenger Funicular Ropeway at Shree Jivdani Devi temple, at S. No. 398, Virar -E, Virar, Maharashtra on S.No Class A/Land/ 346/the year 2017-18 dated 25/10/2017.
- The alignment of the project falls within a Forest land which has been diverted for development of terminal stations and line towers. [Para. 10 @ 552]
- The Expert Appraisal Committee (EAC) (Infrastructure 2) in its 45th EAC meeting held on 17th 18th October 2019 appraised the project and recommended Terms of Reference (TOR) for preparation of the EIA/EMP report as per the provisions of EIA Notification, 2006. It is further submitted that the Answering Respondent on the recommendation of EAC has granted TOR on 03.12.2019.
- As per information available on PARIVESH, no proposal from PP for the grant of Environment Clearance has been submitted so far. [Para. 14 @553]

Relevant Observations of Respondent No. 1 in Report submitted before NGT dated 30.07.2021

- Project Proponent (“PP”) submitted that the construction of project was initiated without prior EC as it was assumed that Funicular Ropeway Project do not attract the provisions of EIA Notification 2006 as it runs on tracks installed over pillars.
- Public works department (PWD) vide letter dated 30.11.2019 clarified that Funicular Ropeway does not fall under the purview of Ropeway Advisory Board of Public Works Department (PWD), Government of Maharashtra. **[Letter @1072 of Report]**
- The construction of Funicular Ropeway system has been started before obtaining EC. The installation of the system is completed, and trial runs were conducted. The operations of system are yet to be commenced. **[S. No. 12 @ 1017]**
- Regional Office MoEF, Bhopal diverted 1.95 ha of forest land vide letter no. 8B/37/97-FCW/982 dated 02.05.2000. **[Annexure-3 @ 1032]** However, PP did not obtain the change in land use permission in view of the change of technology from “mono cable pulsed fixed grip passenger ropeway” to Funicular Ropeway. **[S. No. 4 @ 1012]**
- MPCB granted consent to establish for the project vide Letter dated 08.07.2020. **[Annexure-4 @ 1037]**
- Construction of the project had commenced, and the status was reported in the office letter dated 18.12.2019.
- The PP had started the Funicular Ropeway Project following the previous EC which was granted for a Monocable Ropeway Project which is covered under Aerial Ropeway Act as they were unsure as to whether it falls under the Aerial Ropeway Act’s purview, clarification was sought from Ropeway Advisory Board of PWD. The Board clarified that vide letter dated 30.11.2019 that it does NOT fall within their purview. **[S. No. 8 @ 1013-1014]**
- SEIAA, Govt. of Maharashtra vide letter dated 17.09.2009 granted EC for the aerial ropeway based on monocable pulsed ropeway project.
- Public hearing was conducted on 30.12.2020. **[Annexure-5 @ Pg. 1043]**

Submission of R-4 in Counter Affidavit filed on 04.10.2021

- Earlier a similar application was dismissed by NGT and the same bars the present application being on same cause of action. **[@1094]**
- Motivated litigation as Applicant is proxy of one M/s DRIL. **[@1094-1095]**
- The application is barred by Limitation. **[@ 1100]**
- Obtaining environment clearance is not mandatory for the funicular ropeway projects as per the EIA Notification. **[@ 1098]**

- No substantial question related to environment has been raised in the OA by Applicant. [@ 1099, 1101]

Submissions of R-8 vide affidavit dated 13.12.2021

- EC mandatory for Funicular Ropeway projects
- That no prior EC has been obtained by R-4.
- They are in process of deciding compensation on account of non-compliance of environmental norms.

Written Submissions of Applicant:

1. On the issue of limitation, we are relying on order dated 10.01.2022 of the Hon'ble Supreme Court of India in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 Of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020, wherein the Hon'ble Supreme Court has relaxed the limitation period for the cases for which the limitation would have expired during the period between 15.03.2020 till 28.02.2022.
2. The project is covered by item 7(g) of schedule of EIA notification 2006. R-1 and R-8 in their Counter Affidavit has clarified that EC is required for Funicular Ropeway Projects.
3. No prior environmental clearance obtained by R-4/ R-5.
4. Environmental Clearance has been obtained for other funicular ropeway projects in State of Maharashtra [Environmental Clearance Certificate for funicular ropeway at Saptashringi Gad. And Hajimalang Gad.] [@ Pg 1217 of Rejoinder (R-4)]
5. Respondent No. 4/ Sri Jivdani Devi Sansthan in their Application have themselves admitted that the project is covered under Item 7(g) of EIA Notification, 2006, and this require Environment Clearance. [Rejoinder Annexure C, @ Pg 64 of Rejoinder (R-1)]
6. Respondent No. 4 Applied for EC on 30.09.2019 and went for public hearing on 30.12.2020, after project was completed. Applicant submitted its objections later on. [Annexure-R/2 and R/3 @1224-1229 of Rejoinder (R-4)]
7. Consent to establish was obtained on 08.07.2020 i.e., after the commencement of project. Furthermore, the Consent to establish is granted subject to certain conditions which includes "*PP shall not take any effective steps prior to obtaining EC*" (@ Pg 1038 of Report of R-1).
8. Violation of provisions of Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, and the Environmental Impact Assessment Notification, 2006.

9. Respondent No. 4 has sought for the query from Ropeway Advisory Board of Public Works Department (PWD) only on 1st November 2019 which is much after commencement of project. [**@1072 of Report**]
10. In earlier round of litigation, in application filed by one DRIL, the matter was dismissed by NGT on ground of delay and was not heard on merit. Thus, present OA may not be dismissed on that ground.

Cases Referred:

S. No.	Case	Held	Relevant Paragraphs
1.	<i>H.P. Ranjanna v. Union of India & Ors.</i> , Appeal No. 54 of 2018, NGT Principal Bench New Delhi.	- Demolition of construction when the same was done without obtaining prior EC and consent to establish - compensation and costs imposed for harm caused to environment	Para 145, 186, 187, 188, 310, 312, 321(ii), (iii)
2.	<i>Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Ors.</i> 2020 SCC Online SC 347	- Ex post facto EC alien to environmental laws. - Environmental laws cannot take cognizance of the notion of ex-post facto clearance since it will be contrary to law, Precautionary Principle as well as need for sustainable development. - Penalties imposed on the industries on account of noncompliance with environmental norms.	Paras 21-23, 35, 39
3.	<i>Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors.</i> , Civil Appeal No. 5041 of 2021 before Supreme Court of India	SC ordered for demolition of buildings being illegal construction.	Paras 41. (viii), 150, 152, 155, 157

4.	<i>Kehar Singh v. State of Haryana</i> reported as 2013 SCC Online NGT 52	Defines the terms cause of action as mentioned under Section 14 of the NGT Act.	Para 16
5.	<i>M/s. Essjay Ericsson Private Limited v. M/s. Frontline (NCR) Business Solutions Pvt. Ltd.</i> , Company Appeal (AT) (Insolvency) No. 936 of 2021 before National Company Law Appellate Tribunal, Principal Bench, New Delhi, Order dated 10.01.2022.	With regard to the limitation period, holding that in case appeal or application is filed within the period of limitation as extended by the Hon'ble Supreme Court, there is no occasion to file application for condonation of delay under Section 5 of the Limitation Act.	Paras 7, 19, 20, 21

THROUGH



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Filed On: 28.04.2022
New Delhi

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

APPEAL NO. 54/2018

IN THE MATTER OF:

H.P. Ranjanna

Aged about 59 years
S/o Late Papa Reddy
Residing at No. 1632,
22nd Cross, 26th Main, 2nd Sector, HSR Layout,
Bengaluru-560102, Karnataka

Appellant

Verses

1. Union of India

Through Secretary,
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhavan,
Jor Bagh Road,
New Delhi-110003

2. The State of Karnataka

Vidhana Soudha, Bangalore-560001
Represented by its Chief Secretary

3. Karnataka State Environment Impact Assessment Authority (SEIAA)

Ambedkar Veedhi,
Sampangi Rama Nagar,
Bengaluru, Karnataka-560001
Represented by its Member Secretary

4. Bangalore Development Authority (BDA)

T. Chowdaiah Road, Kumara Park West
Bangalore-560020
Represented by its Commissioner

5. Bruhat Bengaluru Mahanagara Palike (BBMP)

N.R. Square, Corporation Circle,
Bangalore-560001
Represented by its Commissioner

6. The Karnataka State Pollution Control Board

“Parisara Bhavan”, #49, 4th and 5th Floor,
Church Street, Bangalore-560001
Represented by its Chairman

7. Karnataka State Fire & Emergency Services

No. 1, Annaswamy Mudhaliar Road,
Bangalore-560042
Represented by its Director of Fire Services

8. Bangalore Electricity Supply Company (BESCOM)

Corporate Office, K.R. Circle
Bangalore-560001
Represented by its Managing Director

9. Bangalore Water Supply and Sewerage Board (BWSSB)

Cauvery Bhavan, K.G. Road,
Bangalore-560009
Represented by its Chairman

10. Lake Development Authority (LDA)

Parisara Bhavan, No. 49, Second Floor, Church Street,
Bangalore-560001
Through its chief Executive Officer

11. Wonder Projects Development Private Limited

A Company Incorporated under the Companies Act, 2013
Having Registered Office at
Godrej One, 5th Floor, Pirojshanagar,
Eastern Express Highway, Vikrohli (East)
Mumbai-400079

Having Regional Office at

No. 80, Second Cross, Hulkul Ascent,
Lavelle Road, Bangalore-560001
Through its authorized Signatory

12. Godrej Properties Ltd.

A Company Incorporated under the Companies Act, 2013
Having Registered Office at
Godrej One, 5th Floor, Pirojshanagar,
Eastern Express Highway, Vikrohli (East)
Mumbai-400079

Having Regional Office at

No. 80, Second Cross, Hulkul Ascent,
Lavelle Road, Bangalore-560001
Through its authorized Signatory

Respondent(s)

With

ORIGINAL APPLICATION NO. 602/2019

IN THE MATTER OF:

H.P. Rajanna

Aged about 60 years
S/o Late Papa Reddy
Residing at No. 1632, 22nd Cross, 26th Main,
2nd Sector, HSR Layout, Bengaluru-560102
Karnataka

Applicant

Verses

- 1. Union of India**
Through Secretary,
Ministry of Environment, Forest & Climate Change (MoEF&CC)
Regional Office, South Zone,
Kendriya Sadan, 4th Floor, E&F Wings, 17th Main Road,
Koramangala II Block,
Bengaluru-560034
- 2. The State of Karnataka**
Through its Chief Secretary
Vidhana Soudha,
Bangalore-560001
- 3. Karnataka State Environment Impact Assessment Authority (SEIAA)**
Through its Member Secretary
Ambedkar Veedhi,
Sampangi Rama Nagar,
Bengaluru-560001
- 4. Bruhat Bengaluru Mahanagara Palike (BBMP)**
Through its Commissioner
N.R. Square, Corporation Circle,
Bangalore-560001
- 5. Karnataka State Pollution Control Board (KSPCB)**
Through its Chairman,
“Parisara Bhavan”, #49, 4th and 5th Floor,
Church Street, Bangalore-560001
- 6. Bangalore Water Supply and Sewerage Board (BWSSB)**
Through its Chairman
Cauvery Bhavan, KG Road,
Bangaluru-560009
- 7. Bangalore Development Authority (BDA)**
Through its chairman,
Kumara Krupa West, T. Chowdaiah Road
Bengaluru-560020
- 8. Karnataka State Fire & Emergency Services (KSFES)**
Through its Director of Fire Services
No. 1, Annaswamy Mudhaliar Road,
Bangalore-560042
- 9. Wonder Projects Development Private Limited**
Through its authorized Signatory
No. 80, Second Cross, Hulkul Ascent,
Lavelle Road, Bangalore-560001
- 10. Godrej Properties Ltd.**
Through its authorized Signatory
No. 80, Second Cross, Hulkul Ascent,
Lavelle Road, Bangalore-560001

Respondent(s)

With

ORIGINAL APPLICATION NO. 281/2019

IN THE MATTER OF:

Mahadevpura Parisara Samrakshane Mattu Abhivrudhi Samiti
(MAPSAS)

Regd. Office: Incubex,
#9/2, Coronet Green Commercial,
(Above Big Bazar)
Sarjapur Road, Bengaluru-560102
Represented by its Managing Trustee
Sri Subramanian Sankaran

Applicant

Verses

1. Union of India

Indira Paryavaran Bhavan,
Jor Bagh Road, New Delhi-110003
Through the Ministry of Environment, Forest & Climate Change
Represented by the Secretary

2. Karnataka State Environment Impact Assessment Authority (SEIAA)

Ambedkar Veedhi,
Sampangi Rama Nagar,
Bengaluru, Karnataka-560001
Through its Member Secretary

3. Bangalore Development Authority (BDA)

T. Chowdaiah Road, Kumara Park West
Bengaluru-560020
Represented by its Commissioner

4. Bruhat Bengaluru Mahanagara Palike (BBMP)

N.R. Square, Corporation Circle,
Bengaluru-560001
Represented by its Commissioner

5. State of Karnataka

Vidhana Soudha,
Bengaluru-560001
Represented by its Chief Secretary

6. Karnataka State Pollution Control Board (KSPCB)

“Parisara Bhavan”, #49, 4th and 5th Floor,
Church Street, Bengaluru-560001
Represented by its Chairman

7. Bangalore Electricity Supply Company (BESCOM)

Corporate Office, K.R. Circle
Bengaluru-560001
Represented by its Managing Director

8. Bangalore Water Supply and Sewerage Board (BWSSB)

Cauvery Bhavan, KG Road,
Bangalore-560009
Represented by its Chairman

9. Central Ground Water Authority (CGWA)

30, Sector-5, RK Puram,
New Delhi-110066
Represented by its Chairman

10. Sri. Ramesh Kumar

S/o H. Srinivasa Reddy
Aged about 38 years
Residing at halanayakanahalli
Carmelram Post,
Bangalore-560039

Respondent(s)

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Mr. Ram Prasad, Advocate (In OA No. 281/2019)

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Advocates for respondents-11 and 12
Mr. Darpan KM, Advocate for State of Karnataka and BBMP
Mr. Mukesh Kumar, Advocate for KSPCB
Mr. H.K. Vasanth, Advocate for SEIAA, Karnataka

ORDER**PRESENT:**

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Reserved on: 22nd June, 2021
Pronounced and uploaded on: 30th July, 2021

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. In these three matters, appellant/applicants have brought before us their apprehension which according to them is real, eminent and substantial to the environment and ecology on account of construction activities around wetland area in Bengaluru city, State of Karnataka which is known as city of Gardens and also had a large number of lakes

at some point of time but there is substantial extinction/disappearance due to encroachment, reclamation etc. in the name of development. Threat to environment presently is a serious issue. The people pay least respect to environment and do not hesitate in causing damage or destruction or otherwise loss to ecology and environment in order to gain materialistic luxuries of life. The common belief is that the material substance belongs to them and environment is a no man's land where anybody can lend and do whatever it likes unmindful of damage to environment and ecology.

2. Protection of environment is not a novel idea of West only or something which has its genesis a few decades or centuries back. Instead, in India, at least we have considerable recorded documents to show that nature and environment has been paid due regard, treated in holistic manner and revered by people of this Country, comprising of all constituent and entities. In fact, our Vedic Literature shows that the very human body was treated as comprising of Pancha Bhutas or Five elements namely Ether, Universal Space or Firmament (Aakash), Air (Vayu), Energy or Fire (Agni or Tez), Water (Aapah or Jal) and Earth (Prithvi). Nature has maintained a status of balance among these constituents or elements and living creatures. Since time immemorial or Vedic or Pre-Vedic era, we find that in Indian sub-continent Saints, sages and Seers were great visionaries. They perceived creation of universe in a scientific manner. They revealed mysteries of cosmic evolution with profound wisdom. To bring the people in closeness with nature, intellectuals in ancient India, gave it religious form so that people will treat dictates towards nature as mandate and follow all steps for its preservation and protection. We give respectful relations to various

natural attributes e.g. earth as mother. Similar relative terms were used for Tree, Sky, Rain, Water, Air etc.

3. In Vedic Literature water has been given very high respect and treated with great reverence. Water is a part of human environment. It has been pointed out that it occurs in five forms namely: 1. Rain Water (Divya), 2. Natural Springs (Srevanti), 3. Wells and Canals (Khanitrimah), 4. Lakes (Svayamjah) and 5. Rivers (Samudrarthas). Some other classifications have also been made like drinking water, medicinal water and stable water etc. It is said that all creatures are borne from water, and water is producer of all that is stationary or all that moves. Saints, Sages and Seers were aware that human habitation is mostly near rivers and waters and their daily activities would likely pollute water and harm nature's balance. To discourage it, we find in Padam Puran a caution. It says ***"The person who pollute water of ponds, wells or lakes goes to hell"***. In Chandogya Upanishad, it is said ***"Water has generated plants which in turn generate food"***. Rig Veda instructs that forest should not be destroyed, earth is creeper of creation, container of forest, trees or hubs and plants are alive. Padam Puran says that one tree is equal to 10 sons.

4. In Vedic era, Saints, Sages and Seers always propagated that in environment all elements are interrelated and affect each other. Sun draws water from ocean through rays. Earth gets rain from sky and it goes to plants. Plants produced food for living being. The whole process of nature was treated as a sort of 'Yajna' ('Yagya'). Probably with this in mind, we find, in Vedic philosophy, 'Yajna', i.e., Yagya was an important concept and part of Vedic environmental awareness. The view was that

Yajan (Yagya) cleans atmosphere through its medicinal smoke. It provides longevity, breath, vision etc., as is evident from Yajur Veda.

5. Issue of ecological damage to the area between two lakes namely 'Kaikondarahalli Lake' and 'Kasavanahalli Lake' is an issue in these matters. In fact, the disputed project sites are abutting 'Kaikondarahalli Lake' and at a distance of about 300 to 400 meters from another lake namely, 'Kasavanahalli Lake'. The grievance is that Statutory Authorities are not taking care for protection of environment and in particular, wetland and its surrounding area, by allowing construction activities and development of residential projects in the wetland area which will damage the said area irreversibly and may result ultimately in extinction of wetland also. Respondents-PPs are contesting the matter, denying all the allegations and we have to examine rival claim with the objective that in environmental matters, sustainable development is the principle on which various aspects have to be considered and development as well as protection of environment has to be maintained with a balanced approach.

6. Appeal No. 54/2018 and OA No. 602/2019 have been filed by the same person namely H.P. Ranjana complaining about violation of environmental laws and damage to the environment on account of a project launched by M/s. Wonder Projects Development Private Limited (respondent-11), M/s. Godrej Private Limited (respondent-12), mainly on the ground that the project is abutting to "Kaikondarahalli Lake", has violated environment laws including provisions relating to wetlands and Rajakaluves which are passing through or around the proposed project. OA No. 281/2019 relates to different survey numbers and project carried on by another person namely Ramesh Kumar but grounds taken therein

are also violation of provisions relating to wetlands and Rajakaluves, and constructions raised in 'buffer zone' or surrounding area of "Kaikondarahalli Lake". The issues raised in all these three matters are broadly overlapping and on similar legal grounds. Hence all the three matters have been heard together and are being decided by this common judgment.

7. Before considering the issues on merits, we find it appropriate to have, in brief, pleadings of the parties in all the three matters, but separately.

Appeal No. 54/2018-(Pleadings of Appellant):

8. Appeal No. 54/2018 has been filed on 09.04.2018 under Section 16(h) read with Sections 14, 15, 18 and 20 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010') assailing Environmental Clearance (hereinafter referred to as 'EC') dated 10.01.2018 issued by Karnataka State Environment Impact Assessment Authority (respondent-3) (hereinafter referred to as 'SEIAA, Karnataka') in favour of M/s. Wonder Projects Development Private Limited (respondent-11) a subsidiary company of M/s. Godrej Properties Ltd. (respondent-12), having registered office at Godrej One, 5th floor, Pirojshanagar, Eastern Express Highway, Vikrohli (East), Mumbai (hereinafter referred to as the 'PP'). Appellant has further prayed that respondents authorities be restrained from granting any permission, sanctions, licenses, clearances, consents, no objection certificates, building plans and building licenses in favour of PP; respondents 11 and 12 shall not create any Third Party Rights, whatsoever, in any manner in the Project land or part thereof or changing or altering nature and character of Project land, putting up any construction thereon, and carrying on any construction activities, in any

manner, whatsoever. Further it is prayed that any permission, sanctions, licenses, clearances, consents and no objection certificates, issued in favour of PP in relation to project in question, be quashed, and PP as well as respondents authorities be directed to pay compensation, restitute and remediate damage caused to the environment and ecology of eco-fragile area on account of gross negligence and non-application of mind and also for non-adherence to their statutory duties under law. Lastly, it is prayed that respondents' authorities be directed to enforce judgment of this Tribunal, rendered in ***Forward Foundation & Ors. v. State of Karnataka & Ors., Original Application No. 222/2014 dated 07.05.2015 and 04.05.2016***; and also provisions of Environment Impact Assessment Notification, 2006 (hereinafter referred to as 'EIA 2006'), Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act, 1974'), Environment (Protection) Act, 1986 (hereinafter referred to as 'EP Act, 1986'), Revised Master Plan-2015 (hereinafter referred to as 'RMP-2015'), Karnataka Town and Country Planning Act, 1961 (hereinafter referred to as 'KTCP Act, 1961'), Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as 'KMC Act, 1976') and other Municipal Bye-laws, concerning environment, in relation to 'buffer zones'.

9. Facts in brief, as stated by Appellant, are, that he is resident of 1632, 22nd Cross, 26th main, 2nd Sector, HSR Layout, Bengaluru, Karnataka which falls in Planning Area no. '3.18 Begur' under RMP-2015. The disputed work of PP involves construction of new high rise residential building project, titled as, "Godrej Reflections", on a single plot admeasuring 12 acres 18 guntas in Survey nos. 61/2, 62 and 63/2 and falls in ward no. 150 (Bellandur Ward), Kasavanahalli, Mahadevapura zone, Varthur Hobli, Bengaluru. Project is within the same planning area

in which Appellant is residing. It is also within the jurisdiction of Bruhat Bengaluru Mahanagara Palike (respondent-5) (hereinafter referred to as 'BBMP'). PP submitted an application dated 14.10.2017 to SEIAA, Karnataka, seeking 'Prior EC' for disputed project under EIA 2006 stating that the construction is proposed on a plot area of 50382.91 square meters and total built up area is 128193.9 square meters. The disputed project comprises of 2 residential blocks having 2 Basements+Ground Floor+20 Upper Floors with 655 units. Total parking space, proposed was, 877 number of cars. PP also disclosed that water consumption would be 534 KLD (Fresh water + Recycled water) and total waste water discharge would be 482 KLD. PP proposed to construct two Sewage Treatment Plants (hereinafter referred to as 'STP') with a capacity of 210 KLD and 280 KLD. The application and documents submitted by PP were considered by State Environment Assessment Committee (hereinafter referred to as 'SEAC') in its meeting dated 20.12.2017. It recommended to accord EC which was issued by SEIAA, Karnataka, vide letter dated 10.01.2018. This EC has been assailed by Appellant broadly on the following grounds:

- (a) Form I and IA along with Environment Management Plan submitted by PP for seeking grant of EC suffers from serious errors on facts and is a blatant attempt to fraudulently mislead SEIAA, Karnataka, in terms of information provided;
- (b) Impugned EC has been granted in violation of Tribunal's judgments dated 07.05.2015 and 04.05.2016 in **Forward Foundation & Ors. (supra)**;
- (c) Impugned EC has been granted in complete violation of Municipal Laws, Building Bye-laws and RMP-2015;

- (d) Disputed project violates various provisions of Water Act, 1974 and Wetlands (Conservation and Management) Rules, 2017 (hereinafter referred to as 'Wetland Rules, 2017');
- (e) Impugned EC has been granted without any application of mind and suffers from patent errors of law and facts.

10. Elaborating above grounds, appellant has pleaded that there are 3 Rajakaluves/nallas, one primary and two secondary, passing through the project site of disputed project, around which, 50 meters and 35 meters 'buffer zone' is to be maintained which has to be "No Development Zone"; the excavation work required for execution for raising two towers would involve digging of 50000 m³ of earth for Phase-1 and 85000 m³ for Phase-2 which will be carried out in an Eco-fragile land, within the 'buffer zone' that is "No Development Zone" of lake and Rajakaluve, is bound to affect Eco-system; PP is planning to raise the area, since it has been stated that excavated earth will be reused within the site for ground leveling and also in Green Belt Development activities, within the 'buffer zone' of lake and Rajakaluves, whereby, it will create a virtual embankment within the catchment area and qualitatively destroy Eco-system of Water Bodies; PP's claim that re-use of excavated earth is only ground leveling, is nothing but an eye-wash, and an attempt to mislead the authorities that it would not cause any ecological harm to environment; it is in fact a way to dam lake and Rajakaluves within the project site, altering its natural flow and spread around the area; PP, while stating in the application that excavated earth will be re-used for backfilling and landscape development, in fact, contradicts own stand with respect to Green Belt Development and Landscape Development in as much as, plan to develop landscape around and within 'buffer zone' is an admitted plan of action of

PP and this information has been concealed; the project site is within 'buffer zone'; the sprawling lake touches boundary of project; the area is an extremely Eco-Sensitive Zone; land of project site is an undeveloped site with no population residing thereon; with an expected 655 units of apartment and 877 number of cars to be parked within the site in question; it would be incorrect to claim that there would be no effect on Eco-system of the surrounding areas and no long term effects of such load would fall on Eco-fragile region; the project, if allowed, could obliterate the region in as much as the magnitude of project would place unsustainable load, both in terms of pollution caused and usage of water, amenities, waste discharge and other environmentally harmful activities; the information that disputed project abuts the lake and that there are three Rajakaluves going through the project site, has been concealed; PP on one hand has stated before SEIAA, Karnataka that requirement of water shall be met by Bore-well, but, in fact, record shows that the said requirement shall be met solely from water supplied by Bengaluru Water Supply and Sewerage Board (respondent-9) (hereinafter referred to as 'BWSSB'); the project site is within 75 meters of 'buffer zone' in relation to lake; 50 meters 'buffer zone' in relation to Primary Rajakaluve and 35 meters 'buffer zone' from the edges of Secondary Rajakaluve; any construction within 'buffer zones' is illegal and not only violates Wetland Rules, 2017 but also judgment of this Tribunal in **Forward Foundation & Ors. (supra)** rendered on 04.05.2016; EC has been granted by Competent Authority over-looking specific provisions of Environmental laws, judgment of Tribunal, in a mechanical manner without application of mind, and in fact, in collusion with PP; the project, if allowed to proceed, would cause irreparable harm to the Sensitive Environment, destroy Eco-system of fragile area and Eco-system services associated

with the lake and Rajakaluves; Competent Authority is also violating environment laws in as much as one of the conditions in EC states that the provisions of environmental and other laws shall be followed ignoring the fact that under RMP-2015, 30 meters is the 'buffer zone' provided for "No Development Zone" while the said distance has been extended to 75 meters by Tribunal in ***Forward Foundation & Ors. (supra)***; further, note to Regulation 4.12.1 (ii)(iii) of RMP-2015 states that drains are categorized into three types namely Primary, Secondary and Tertiary and these drains will have a buffer of 50, 25 and 15 meters, respectively, measured from the centre of drain, on either side; Tribunal's order dated 07.05.2016 in ***Forward Foundation & Ors. (supra)*** has expanded 'buffer zone' in relation to Rajakaluves to the extent of 50 meters, 35 meters and 20 meters but these provisions are being violated by allowing construction in 'buffer zone'; PP has proceeded with construction, without a sanctioned building plan, and, also consent under Section 25 of Water Act, 1974; impugned EC also violates provisions of Wetland Rules, 2017 in as much as site of the Project falls in extremely Eco-sensitive wetland and construction allowed therein despite prohibition would violate statutory provisions as above; SEIAA, Karnataka was under a statutory duty to look into all these aspects but without applying mind and considering relevant aspects, in particular, that the project site forms a substantial part of Eco-logically fragile region, has issued EC; SEIAA, Karnataka has neither examined actual site situation nor referred to any data nor limits/restrictions, nor has applied or considered the express mandate of order of Tribunal in ***Forward Foundation & Ors. (supra)***; PP has claimed that it would only develop Park and/or Open Space in 'buffer zone' but even this is not permissible in as much as construction of Parks and/or Open Space, as a part of Civic Amenities would require

laying foundation, providing amenities such as benches/tables/gates/swings etc. and this is also part of construction which is prohibited in a 'buffer zone' being "No Development Zone"; leveling of excavated soil cannot be permitted in 'buffer zone' as it would, in fact, amount to damming and creating an embankment within such 'buffer zone' but SEIAA, Karnataka has not applied its mind on this aspect and in a mechanical manner has issued EC.

11. Appeal at the time of filing was barred by limitation by 21 days. Therefore, MA No. 542/2018 was filed seeking condonation of delay. This application was allowed by order dated 01.10.2018. Delay was condoned and parties were permitted to file their response.

Respondent's pleadings:

12. On behalf of respondents, reply has been filed by Ministry of Environment, Forest & Climate Change (hereinafter referred to as 'MoEF&CC') (respondent-1), SEIAA, Karnataka (respondent-3), BBMP (respondent-5), Karnataka State Pollution Control Board (hereinafter referred to as 'KSPCB') (respondent-6), Karnataka State Fire and Emergency Services (hereinafter referred to as 'KSFES') (respondent-7), and PP, i.e., respondents-11 and 12.

Reply of respondent-1 (MoEF&CC):

13. Respondent-1 in its reply dated 11.05.2018 has stated that under EP Act, 1986, read with Environment (Protection) Rules, 1986 (hereinafter referred to as 'EP Rules, 1986'), a Notification no. S.O. 1533(E) dated 14.09.2006 i.e. EIA 2006 has been issued. It has been subsequently amended from time to time; under EIA 2006, construction of new projects or activities or expansion or modernization of existing projects or activities, listed in the Schedule, annexed to said notification,

entailing capacity addition with change in process and/or technology, shall be undertaken in any part of India, as applicable, only after receipt of 'Prior EC' from Central Government or as the case may be, respective SEIAA; Central Government under Section 3(3) of EP Act, 1986, following procedures specified in EIA 2006, has constituted SEIAAs in different States/Union Territories; under EIA 2006, EC for building and construction projects, area development projects and townships are covered under entry 8 (a) and (b) of Schedule; and reads as under:

(i) 8(a): Building and Construction projects - ≥ 20000 sq. mts and < 150000 sq. mts of built-up area - (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)

ii. 8(b): Townships and Area Development projects Covering an area ≥ 50 ha. And or built up area > 150000 sq. mts - (All projects under Item 8(b) shall be appraised as Category B1).

14. Respondent-1 has further pleaded that the projects under category 'B' are appraised by State Level Expert Appraisal Committees (SEACs) and approved by concerned SEIAA. The disputed project was to be considered by SEAC/SEIAA and not respondent-1, i.e., MoEF&CC. SEIAA, Karnataka, accordingly, in terms of EIA 2006 has granted clearance vide letter dated 10.01.2018, for the work to be carried out at Survey nos. 61/2, 62, 63/2 Kasavanahalli, Mahadevapura Zone, Varthur Hobli, Bengaluru by PP, M/s. Wonder Projects Development Private Limited, (respondent-11)

Reply of respondent-3 (SEIAA, Karnataka):

15. SEIAA, Karnataka (respondent-3) has filed its reply dated 29.01.2019 stating that PPs have applied in accordance with the provisions of EIA 2006 and EC has accordingly been granted by SEIAA,

Karnataka, vide Order no. SEIAA 114 CON 2017 dated 10.01.2018; as per applicable law and guidelines, processing of applications for Consent for Establishment (hereinafter referred to as 'CFE') and Consent to Operate (hereinafter referred to as 'CTO') is undertaken by KSPCB ss grant of EC by SEIAA; the role of KSPCB is limited to the grant of CFE and CTO to a PP, in terms of the provisions of Water Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, (hereinafter referred to as 'Air Act, 1981') ; in respect of project under consideration, only CFE was sissued by KSPCB; M/s. Wonder Projects Development Private Limited had applied for CFE from KSPCB on 18.01.2018; on receipt of this application, officers of Regional Office-Bommanahalli inspected the project on 05.02.2018 and observed that construction work had not yet started; later, CFE application was forwarded to Head Office along with inspection report including details of compliance with this Tribunal's order dated 04.05.2016, with respect to 'buffer zone'; thereafter, PP was called for Technical Presentation on 24.08.2018 wherein clarification on buffer zone with respect to nalla/drain was obtained; it was only after confirming compliance with Tribunal's directions contained in order dated 04.05.2016, with respect to 'buffer zones', CFE was issued.

16. Respondent-3 i.e. SEIAA, Karnataka, has further stated that KSPCB also independently verified, with the help of maps, that nearest water bodies to the project site are "Kaikondarahalli Lake" and "Kasavanahalli Lake"; "Kaikondarahalli Lake" is located adjacent to the proposed project, boundary towards north; as per Regional Officer's report, PP has earmarked 75.67 meters 'buffer zone' from proposed building line (i.e. block 1 & 2) to the lake boundary and as such earmarked this area for Parks/Green Belt; "Kasavanahalli Lake" is located at a distance of about 393 meters towards South; further, PP had

submitted a Development Plan (hereinafter referred to as 'DP') which was approved by Bangalore Development Authority (hereinafter referred to as 'BDA'); after issue of EC and verification of documents submitted by PP, and consideration of issues pertaining to water pollution control measures, KSPCB issued CFE, after placing before CCM meeting held on 15.09.2018; KSPCB has also ensured, after verification, that there is compliance with Tribunal's order dated 04.05.2016 with respect to maintenance of 'buffer zones'; during inspection on 05.02.2018, only a model flat was found constructed for marketing purpose and PP had not taken up any other construction activity; during inspection on 05.02.2018, PP had done ground preparation work only; allegations and insinuations against KSPCB are *prima-facie* false and incorrect and unfounded, either on facts or on applicable provisions of law or the directions of Tribunal.

Reply of respondent-5 (BBMP)

17. Respondent-5, BBMP, in reply dated 05.09.2018 has supported the cause of appellant. It has stated that it issued a Show Cause Notice-cum-Stop Work Notice dated 13.07.2018, Confirmation Order (CO) dated 22.06.2018 and Provisional Order dated 06.06.2018 under Section 321 of KMC Act, 1976. It has further stated, in brief, as under:

- a) The project land, in fact, 'wetland', and is situated abutting "Kaikondarahalli Lake". The project land falls inside and within two kinds of 'buffer zones', defined in the order dated 04.05.2016 of Tribunal in Forward Foundation & Ors. (supra), namely, Lake for which, 'buffer zone' limit was given as 75 meters from the periphery of lake; and Rajakaluves/Nalla for which, 'buffer zone' limit given is 35 meters on either sides from the edges of Rajakaluves/Nalla.

Both these 'buffer zone' limits are 'Prohibited Areas' in terms of order of Tribunal in Forward Foundation & Ors. (supra) and directions issued therein that no permissions for the purposes of sanctioning any construction project can be granted by any authority for construction project, including project in question namely, 'Godrej Reflection';

- b) The project land/wetland is situated in the catchment areas of Bellandur and/or Varthur lakes. It is abutting "Kaikondarahalli Lake";
- c) PP i.e. M/s. Wonder Project Development Private Limited has submitted an application no. BBMP/Add.Dir/JD/NORTH/0202/2017-18 dated 17.11.2017 to BBMP for sanction of Building Plan and building license for the purpose of construction of high rise residential building project (i.e. Godrej Reflections) on the land, Khata no. 4131, Survey nos. 61/2, 62, 63/2 admeasuring 12 acres 18 guntas, situated in Kasavanahalli, Varthur Hobli Bangalore East Taluk, BBMP Ward No.150 (Bellandur Ward), Mahadevpura Zone, Bangaluru;
- d) For the purpose of launching this project, PP has resorted to various illegalities. In fact, PP had widely issued full page public advertisements in leading English daily newspapers (advertisement, copy at page no. 8 of MA No. 541/2018 in Appeal No. 54/2018), advertising its project. In continuation of the same, PP in fact, illegally and unauthorizedly raised construction of 'Model Flat' comprising of ground floor and first floor, measuring 2,500 square feet and there was on-going constructions, therefore, BBMP issued Show Cause Notice-cum-Stop Work Notice dated 13.07.2018;

- e) BBMP issued necessary orders to remove illegal and unauthorized structures. It also issued Provisional Order dated 06.06.2018 under Section 321 (1) & (2) of KMC Act, 1976, followed by Confirmation Order dated 22.06.2018 under section 321(3) of KMC Act, 1976. Photographs at page 60 of rejoinder affidavit filed by appellant, on 22.05.2018 show illegal construction raised in the disputed project land for which BBMP has issued the above said orders to remove unauthorized constructions;
- f) The application dated 17.11.2017 submitted by PP, seeking sanction of building plan and building license is invalid and contrary to mandatory requirements under KMC Act, 1976 and para 3.2 of BBMP Building Bye-laws, 2003 which reads as under:

“3.2 Application and documents to be submitted with the application,- Every person who intends to erect or re-erect or alter a building, including temporary structures for the purpose of exhibitions, trade fair or circus or execute any of the works other than repairs, as specified in Section 299, 304 or 312 of the Act, shall give an application in writing to the Authority in the Form set forth in Schedule II and such application shall be accompanied by plans, documents and information as required hereunder:

Schedule-II (Building Bye-law No.3.2) i.e. Form of application for building license required that:

“3. Site Plan, showing the existing features like trees, well etc. (Block levels to be furnished in cases where the gradient of the land exceeds 5% (1:20) or where basement/cellar floors are proposed below ground level).

10. **No objection certificate** from **agencies** like, **BDA, BESCOM, BWSSB, KSCB** District Magistrate, Director of Factories and Boilers, Controller of Explosives, Railways, Fire Force Department, Airport Authority of India, Government Health Department and **any other authority wherever applicable.”**

- g) The mandatory requirements contemplated vide para 3.2 (3) & (10) at Serial nos. 3 and 10 were not complied with by PP, despite Show Cause Notice-cum-Stop Work Notice dated 13.07.2018 wherein BBMP requested PP to produce documents stated in para no.19 of the said Notice. However, PP has not furnished these required documents till date. BBMP in para no.19 of the notice specifically sought for mandatory permission i.e. Consent to Establish (CFE) from KSPCB and No Objection Certificate (NOC) from BWSSB, for the project in question;
- h) Application form seeking mandatory ‘Consent to Establish’ the project u/s 25 of Water Act, 1974 for establishing the project was submitted only on 10.01.2018. This shows that the application seeking building plan and building licenses were not in accordance with mandatory requirements under BBMP Bye-laws 3.2 and Sections 299, 304 and 312 of KMC Act, 1976. Moreover, it is mandatory to first obtain “consent to establish the project” as stated by Supreme Court, in para 50 of the judgment in **Anirudh Kumar vs. Municipal Corporation of Delhi & Ors., 2015 (7) SCC 779**;
- i) The project site discloses illegal construction activity at the far end (on the Eastern side) of the project. There is vast extent of earth excavated even as on 14.05.2018 and dumping this excavated

earth in the form of hillocks along the periphery of “Kaikondarahalli Lake” and in other parts of the project site;

- j) Respondent-9 (BWSSB), in its letter dated 23.09.2017, addressed to PP, regarding request for issue of statutorily required permission/No Objection Certificate/NOC, has stated:

“The above area falls under jurisdiction of 110 villages and water supply and UGD is maintained by BBMP. Since the work of providing water supply facility in 110 villages is taken up by the Board, until the completion of the work issue of NOC has been withheld.”

- k) The drawings submitted to BBMP by PP for the purpose of sanction of building plan and building license indicate that the proposed constructions of two blocks of residential apartments buildings, i.e., Block-1 (63.60 meters in height) is at the end of project land, while Block-2 is at the entrance of project land. In this background, Zoning Regulation-3.12 framed under KTCP Act, 1961 is applicable to the project and application seeking building plan and building license. Zoning Regulation-3.12 reads as under:

“3.12) No Objection Certificates:

- i. For all Development Plans, **Apartment buildings** and Residential layouts which come under the category stipulated by the KSPCB, **necessary NOC from KSPCB** (KSPCB shall mention the need for environment clearance if any in the NOC) shall be furnished.
- ii. For **all buildings with a height of 24.0m and above**, NOC from Fire Force in addition to **NOC from Pollution Control Board** (KSPCB shall mention the need for environment clearance if any in the NOC) shall be furnished.....”

- l) There is non-compliance of Zoning Regulation-3.12 since height of proposed building is above 24 meters, clearance/consent/NOC from KSPCB is mandatory and PP had not complied with the said requirement for the purpose of sanction of building plan and building license;
- m) The project land being wetland and abutting “Kaikondarahalli Lake”, is in the catchment area of Bellandur Lake and/or Varthur Lake, the Rajakaluve/nalla and lake’s ‘buffer zones’;
- n) PP had submitted, to BBMP, DP issued by BDA i.e. permission for scheme of development of project (not permission for construction of building). Relying upon the said DP, PP has sought for grant of Building Plan and building license from BBMP;
- o) Above stated DP issued by BDA, clearly discloses that there is nalla passing through the adjacent land in Survey no. 57 and that 25 meters buffer line falls inside the project land. However, inside this 25 meter ‘buffer line/zone’ which is a prohibited area, permission for construction of 12 meters wide drive way and installation of gas bank/infrastructure for LPG piped line was approved;
- p) In fact the above said drive way of 12 meters continues and passes through primary nalla as can be seen in the DP and various portions of the said 25 meters wide drive way, falls inside the 50 meter buffer line on both the sides of said 50 meter ‘buffer zone’. This 50 meters ‘buffer zone’ on either sides of the primary nalla is also a prohibited area and not an area of regulated activity. So far as 75 meters lake ‘buffer zone’ is concerned, it is also a prohibited area and not an area of regulated activity, yet permission for

creation of ramp and drive way was approved in respect of both Block-1 and Block-2;

- q) The permission/DP also indicated another nalla in Survey no. 61/1 which is adjacent to Survey no. 61/2 and 25 meter ‘buffer zone’. However, inside this 25 meters ‘buffer zone’/prohibited area, permission for 8 meters wide Fire Driveway and installation of Organic Waste Converter (OWC) and installation of gas bank/infrastructure for LPG piped gas line was approved. On the basis of such a permission/DP, approval for building plan and building license from BBMP was sought for;
- r) DP permitting scheme of development for the entire project is far greater than the extent for which EC is obtained;
- s) The impugned EC dated 10.01.2018, for the construction project, is, for a total built up area of 128193.9 Square Meters. However, permission/DP issued by respondent-4 (BDA) permitting scheme of development, is a result of altered project with change in the scope and configuration which is different from the project conceived by PP in terms of EC dated 10.01.2018. The following table with facts and figures will explain the above said facts:

Sl No.	Particulars	Area measurement in sq. meters based on Environment Clearance	Area measurement in sq. meters based on Development Plan (DP)
1.	Area	1,28,193.9 (Excluding Non-FAR Area)	2,35,076.81 (FAR+Non-FAR)
2.	Number of units/ Apartments	655	688
3.	Total number of parking spaces	877	758
4.	Total number	2 basement floors +	2 basement floors + GF +

	of floors	GF + 20 Upper floors	20 upper floors + terrace floor
5.	Difference in altered project (area, scope and configuration) for which NO Environment Clearance is obtained). Total area permitted (based on DP minus area approved by EC): 235076.81- 128193.9= 106882.91 Sqm.		

- t) There is apparent violation of Condition no. 46 of EC which specifically states that construction activity shall be strictly in accordance with approved site plan/layout drawing annexed to the Environment Clearance (Conceptual Plan submitted to SEIAA, Karnataka is at page no. 57/annexure-A/3);
- u) Based on altered project, permissions/DP was obtained even without EC for such altered project in the scope and configuration. Furthermore, there is apparent violation of Condition no. 5 of General Conditions of EC;
- v) BBMP has not granted any sanction of building plan and building license, on account of above mentioned contraventions and non-compliances of provisions of Zoning Regulations, RMP-2015, KTCP Act, 1961 and directions issued in **Forward Foundation & Ors. (supra)**. BBMP has already issued ‘Show Cause Notice-cum-Stop Work Notice’ dated 13.07.2018;
- w) There is non-compliance of provisions of KTCP Act, 1961 and Section 505 (ii) of KMC Act, 1976;
- x) In addition to violation of Condition no. 45 of EC, there is apparent violation of Condition no. 46;
- y) DP dated 05.03.2018 issued by BDA is at variance with the conceptual plan/drawings (Annexure-A/3, page no. 57) submitted by PP before SEIAA, Karnataka for obtaining EC. Therefore, PP has

misrepresented before different public authorities and obtained different permissions;

- z) It is clear that facts stated at Serial no. 16(c) before KSPCB were contrary to requirements at Condition no. 6 of EC. PP has furnished wrong information before KSPCB. In fact, proposed developments are contrary to all the above said conditions of EC. Constructions carried out in the project land, including ground leveling, are contrary to Condition no. 49 of EC as well as Section 300 of KMC Act, 1976.

Reply of respondent-7 (KSFES):

18. Respondent-7, i.e., KSFES in reply dated 31.01.2019, has stated, in brief, as under:

- a) M/s. Wonder Projects Development Private Limited made an application dated 07.11.2017 to the Office of Director General of Police, Commandant General, Home Guards and Director of Civil Defence and Director General, KSFES for issue of NOC for a multi-storied residential apartment building (Block-1) at Survey nos. 61/2, 62 and 63/2 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk;
- b) Pursuant to the said application, Chief Fire Officer, Bengaluru East Zone, (KSFES) inspected the site on 29.11.2017 and scrutinized drawing pertaining to Survey nos. 61/2, 62 and 63/2, Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk. Inspection Report was prepared and finalized on 04.12.2017. The said Final Inspection Report sent to Director General of Police and Director General of KSFES, and received thereat on 07.12.2017.

The said Report had opined that Builder has incorporated all the required Fire Preventions, Fire Fighting and Evacuation Measures in the drawing as per Part 3 and 4 of Fire and Life safety of NBC 2016 (National Building Code) in the plan and showed on the land. Hence, there was recommendation to issue “No Objection Certificate” for construction of high rise residential building, Block-1, to PP with three Towers i.e., Tower A, B and C at Survey nos. 61/2, 62 and 63/2 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk;

- c) PP submitted another application dated 07.03.2018 in the Office of Director General of Police, Commandant General, Home Guards and Director of Civil Defence and Director KSFES for issue of NOC for a multi-storied residential apartment building at Survey nos. 61/2, 62 and 63/2 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk. This was for construction of Phase-2 building;
- d) Pursuant to the said application, Chief Fire Officer, Bengaluru East Zone, KSFES inspected the site on 19.03.2018 and scrutinized drawing pertaining to Survey nos. 61/2, 62 and 63/2 Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk. The Inspection Report was prepared and finalized on 20.03.2018. Final Inspection Report sent to Director General of Police and Director General of KSFES, and received on 21.03.2018. The said Report opined that PP has incorporated all the required Fire Preventions, Fire Fighting and Evacuation Measures in the drawing, as per Part 3 and 4 Fire and Life safety of the NBC 2016 (National Building Code), hence, recommended issue of NOC for construction of high

rise residential building comprising Block 2 with 4 Towers, i.e., Towers A, B, C & D joint, at Survey nos. 61/2, 62 and 63/2 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk;

- e) After recommendation dated 04.12.2017 for Phase-1 building was made, PP paid statutory fees for NOC dated 22.12.2017. Subsequently, Office of Director General of Police and Director General, KSFES issued NOC bearing No. GBC(1) 336/2017 (Phase-1) for construction of high rise building with 3 Towers, Towers A, B and C at Survey nos. 61/2 and 62 and 63/2, Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk, on 22.12.2017, addressed to Commissioner, BBMP and copy marked to PP;
- f) After recommendation dated 20.03.2018, PP paid statutory fees for NOC dated 17.03.2018 and subsequently, Office of Director General of Police and Director General of KSFES issued NOC bearing No. GBC(1)141/2018 (Phase-2) for construction of high rise building with 4 (four) Towers, i.e., Towers A, B, C and D hearing Survey No. 61/2 and 62 and 63/2, Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk on 20.04.2018, which was addressed to Commissioner, BBMP and copy marked to PP;
- g) Respondent-7 has examined sketches, land, plans in respect of Building/Tower and incorporated Fire Prevention, Fire Fighting and Evacuation Measures, along with plans and also NOC issued with terms and conditions, which is consistent as per NBC 2016 and also Part 4 Fire and Life Safety and Local Zoning Regulations;
- h) Respondent-7 would inspect such constructed high-rise buildings physically and Clearance Certificate would be issued after

completion of Project, as per NOC and terms and conditions, along with Local Zoning Regulations and NBC 2016 Part 3 and 4, and, after strict compliance of the aforesaid statutory requirements. If there is compliance in the strict sense, only then “Clearance Certificate” would be issued and addressed to Commissioner for BBMP;

- i) Respondent-12 i.e. Godrej Private Limited has not applied for any NOC for high rise building and there is no pending application of the firm;
- j) Fire and Emergency Department does not deal with pollution and environmental issues, No Development Zone, Eco-system, No Deposition of pollution, Land Scope, Revenue aspect, Rajakaluve, EC, Lake ‘buffer zone’, Eco-system and overall environmental aspects, etc. Respondent-7 is concerned with the limited scope of Fire and Safety, for which NOCs, subject to compliance of conditions were issued.

Reply of PP (M/s. Wonder Project Private Limited) (Respondent-11):

19. Combined reply dated 19.05.2018 on behalf of respondents-11 and 12 has been filed. It is stated therein that Godrej Group was established in 1897 and comprised of a varied business portfolio including real estate development etc. Respondent-12 brings Godrej Group philosophy of innovation, sustainability and excellence to real Estate Industry. Development undertaken by respondent-12 combines a 121 years of legacy of excellence and trust with a commitment to cutting-edge design and technology. Respondent-12 is currently developing residential, commercial and township projects which are spread across, approximately, 14 million square meters (151 million square feet) in 12

cities. It has contributed immensely to environmental sustainability and received over 200 awards, in past 5 years. Respondent-11 is an Associate Company of respondent-12, involve in Real estate activities with own or leased property, therein indulging in buying, selling, renting and operating of self-owned or leased real estate such as apartment buildings and dwellings, non-residential buildings, developing and subdividing real estate into lots etc. The appeal in question is gross abuse of process of law, with a view to harass and browbeat respondents-11 and 12, alleging frivolous and vexatious grounds, filed purposely with fraudulent intention, presenting incorrect and misleading facts so as to cause damage to them. Replying on the merits of the case, in brief, respondents-11 and 12 have said as under:

- a) Respondent-11 is lawful owner of land bearing Survey nos. 61/2, 62 and 63/2, situated at Kasavanahalli Village, Varthur Hobli, Bengaluru, admeasuring 12 acres and 18 guntas (50382.92 square meters). The total land, as per RMP-2015 falls within Industrial (Hi-Tech) Zone. In view of the aforesaid plan, land in question is fit for urbanization and hence not an eco-sensitive/eco-fragile zone. The construction would not cause any adverse impact on the environment;
- b) A portion of total land is abutting “Kaikondarahalli Lake”;
- c) There is only one primary Rajakaluves/nalla flowing through portion of Survey no. 63/2 which is specified as ‘**Kharab**’ in all Revenue documents;
- d) There are two tertiary nallas and one secondary nalla, flowing outside total land of disputed project;
- e) PP has obtained approval for change of land use from Industry (Hi-Tech) to residential from BDA (respondent-4). PP is required to

fulfill conditions of EC dated 10.01.2018 specially relating to maintenance of 'buffer zone'. In compliance thereof, 'buffer zone' is to be maintained;

- f) Out of total land, measuring 50382.92 square meters, construction area is only approximately 10842 square meters. The coverage provided as per Zonal Regulation is 50% whereas PP, after adequately leaving 'buffer zones', as required in EC dated 10.01.2018, has achieved a ground coverage of only 22.66%;
- g) The Plan prescribed maintenance of a 'buffer zone' of 30 meters distance around the lake which has been extended to 75 meters vide judgment of this Tribunal in ***Forward Foundation & Ors. (supra)***. Vide Clause 47 of EC, PP is to ensure that existing water body, canals, Rajakaluves and other drainage and water bound structures are retained unaltered with due 'buffer zone'. Hence adequate safeguards have been provided for compliance of existing laws vide EC dated 10.01.2018;
- h) Construction shall be undertaken on the area which does not fall under 'buffer zone';
- i) Appellant has no *locus standi* to maintain appeal as is neither an aggrieved person nor otherwise has any interest in the subject and it is only to gain publicity, the present appeal has been filed; he has not approached Tribunal with clean hands and misrepresented facts;
- j) It is not correct that project is being constructed in an inherently eco-fragile environment within the 'buffer zone' of the lake, Rajakaluves and environmental load of population envisaged to stay and the same would be more than what the ecosystem can withstand;

- k) It is not correct that there are three Rajakaluves flowing through the project; in fact there is only one Primary Rajakaluves flowing through portion of Survey no. 63/2 and one Secondary and two Tertiary Rajakaluves flowing outside the total land;
- l) It is incorrect that PP undertook construction within the 'buffer zone' and that too without a sanctioned building plan and without consent obtained from respondent-9 (BWSSB); in fact, PP did not commence construction before issue of Prior EC but was only taking preparatory steps towards contouring and landscaping with a view to maintain greenery on the total area and prepare for upcoming monsoon;
- m) Form 1A submitted by PP for grant of EC is only an application expressing desire of promoter to commence a particular project. It is neither conclusive nor decisive on the project. It is only a guiding factor;
- n) Appraisal Committee of respondent-3 i.e. SEIAA, Karnataka, consisting of Experts from different fields, before grant of EC, circumspectly assessed Form 1A, conducted due site inspections coupled with independent and thorough evaluation and decided necessary parameters and safeguards for the project independently. Only after fully being satisfied, EC was granted;
- o) Appellant has wrongly stated that project site falls within 'buffer zone' of "Kaikondrahalli Lake" or within 'buffer zone' of one Primary or two Tertiary Rajakaluves. The fact is that out of total land, measuring 50382.92 square meters, construction area is only approximately 10,842 square meters;
- p) PP, in due compliance with conditions of EC and Tribunal's judgments in ***Forward Foundation & Ors. (supra)*** is performing

its work. 'Buffer zones' have been maintained as 'Green Belt' in terms of conditions of EC and will be treated as 'No Construction Zone' in Form 1;

- q) PP at Sl. no. 1.22 has clearly said "a primary nalla connecting to "Kaikodrahalli Lake" is crossing across the project site. 50 m buffer on both side are provided as per NGT specifications". In answer to Sl. no. 2, under the head "Environmental Sensitivity", PP has said "Kaikondrahalli Lake exists at a distance of 75m. Harlur/Kasavanahallil Lake at a distance of 0.800km (800 meters)";
- r) It is not correct that project will be constructed in an inherently Eco-Fragile environment, within 'buffer zone' of lake and Rajakaluves;
- s) There is no concealment or wrong information on the part of PP;
- t) Appraisal Committee/SEIAA does not grant EC on the basis of information provided in Form 1A but Experts of Committee assess the information contained in Form 1A, conduct due site inspections coupled with independent and thorough evaluation, decide necessary parameters and safeguards for a given project, independently, and only thereafter grant EC;
- u) The project over total land is a single/independent project, comprising of two phases. No earth will be excavated within 'No Development Zone' i.e. 'buffer zone' of lake or Rajakaluves. It is incorrect that the area would be raised within 'buffer zone' or lake or Rajakaluves. It is also not correct that PP would dam and create an embankment in catchment area, alter natural flow of lake or Rajakaluves affecting Eco-system of water bodies. In fact, excavation necessary for construction of project, will be carried

outside 'buffer zone' of lake and Rajakaluves, after obtaining necessary approval;

- v) The photographs placed before Tribunal by appellant do not convey correct position in as much as PP was only undertaking preparatory steps for contouring and landscaping, carrying out plantation and maintaining greenery in the total area. This was to avail benefits of upcoming monsoon;
- w) It is *trite* to state that although total area falls under the 'buffer zone', no construction will be carried out in the said 'buffer zone';
- x) PP had sought permission to meet water requirements through BWSSB and Bore-well. However, vide notification dated 20.08.2016, concerned authority restricted erection of new Bore-wells. This is why the information furnished in the Form 1 did not indicate encountering of water demand through Bore-well;
- y) All permissions, approvals, sanctions required under KTCP Act, 1961 was applied by PP, supported with requisite information/documents conforming the compliance with the provisions of KTCP Act, 1961.
- z) Section 505 of KMC Act, 1976 is not attracted in the present case;
- aa) Section 300 of KMC Act, 1976 is also not attracted as no work has commenced in the present instance;
- bb) Respondent-11 has applied for necessary consent under Section 25 of Water Act, 1974 as well as sanction plans and undertakes to commence construction work upon obtaining all necessary approvals from the statutory authorities;
- cc) EC has been granted by concerned authority, after recommendation being given by an Expert Committee;

- dd) It is correct that leveling of excavated soil cannot be permitted in 'Buffer Zone'. However, PP is not carrying out as on date, and, undertake not to carry out, any construction within 'Buffer Zone';
- ee) Appellant has not placed on record any Expert Report or document to substantiate his claim. Only on the basis of surmises and conjectures, leveled false allegations upon respondents-11&12.

Appellant's pleadings in Rejoinders:

Rejoinder filed by the appellant in reply to the counter affidavit of MoEF&CC (respondent-1)-

20. Since in the counter affidavit of respondent-1, facts relating to statutory enactments were given, therefore, nothing has been said by appellant in this regard. The only other objection raised in the reply of MoEF&CC was in respect of limitation that appeal is barred by limitation. Appellant has contradicted the objection in rejoinder affidavit and stated that he has filed appeal within 90 days and, therefore, Tribunal has power to condone delay. Besides, it is also stated that EC dated 10.01.2018 granted by SEIAA, Karnataka was not uploaded till the date of filing of rejoinder, therefore, limitation did not commence in the light of Tribunal's Judgment in ***Appeal No. 39/2012, Save Mon Region Federation and Lobsang Choedar vs. Union of India and Ors.***

21. Since delay has already been condoned by Tribunal, and that has not been challenged by any party in any superior Forum, therefore, that issue has attained finality and, we are skipping to mention further pleadings contained in this rejoinder, relating to delay.

Rejoinder in reply to composite counter affidavit of PP:

22. Appellant has stated that BBMP (respondent-5) has already passed Provisional Order dated 06.06.2018 and Confirmation Order dated

22.06.2018 under Sections 321 (1) and (2) and 321 (3) of KMC Act, 1976, respectively, to demolish structure and buildings raised by PP on disputed site and these orders are on record, filed along with MA No. 1063/2018.

23. It shows that construction raised by PP was illegal. Consequently, BBMP be allowed to proceed to execute aforesaid orders. Further, illegalities committed by PP are also demonstrated by Commissioner, BBMP in Show Cause Notice-cum-Stop Work Notice dated 13.07.2018 which also fortifies complaint of applicant that project in dispute is illegal and in violation of environmental laws. The Building Plan of PP includes construction of drive way of 12 meters, passing through Primary nalla falling inside 50 meters buffer line, which is illegal and impermissible. RMP-2015 is one of the protections relating to ecology and environment and has to be dealt with in consonance with Statutes relating to environment which include Water Act, 1974, EP Act, 1986, CGWA Guidelines, EIA 2006 etc. as also judgments of this Tribunal and Supreme Court on environmental laws. The 'buffer zone' area, stated in RMP-2015, having been expanded by Tribunal vide judgment **Forward Foundation & Ors. (supra)**, observing that any violation of such 'buffer zone' would cause harm to environment and hydrology, has to be obeyed in words and spirit and cannot be violated. PP commenced construction work illegally with no regard to ecology, dwelled soil around Rajakaluves/nallas and also to block their natural flow. DP relied by PP shows that there are definite concrete constructions within both, the lakes and Rajakaluves 'buffer zones' including fire drive way which passes along and across Rajakaluves. PP has obtained EC by misrepresenting facts. Photographs (annexure A/6 to appeal) show that 'buffer zones' are being completely violated with soil being excavated

around it to change natural course of water of nallas. This is corroborated by DP annexed by PP (annexure R/3 to his reply). Replying to question of *locus standi*/aggrieved in the matter, it is said, where substantial question of environment has arisen and a person has obtained some permission/clearances from environment departments by misrepresentation of facts and likely to cause damage to environment, gives adequate *locus standi* to appellant to bring dispute before Tribunal. Even otherwise, appellant being resident of the same planning area no. '3.18 Begur', has a right of clean and decent environment, maintenance of ecologically fragile area, has a substantive interest in dispute, hence objection against *locus standi* of appellant is misconceived. Tribunal's judgment in ***M.A. No. 49/2013 in OA No. 26/2012, Goa Foundation & Another vs. Union of India & Others*** has said that an "aggrieved person" cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of appellant's interest and nature and extent of prejudice or injury suffered by him.

24. Reply in rejoinder affidavit relating to limitation is being skipped since after disposal of delay condonation application, it is not relevant for deciding the matter on merits.

25. On the facts of area in question owing to its proximity to lake, Appellant says that presence of multiple 'buffer zones' within the area relating to lake and Rajakaluves, show fragility associated with such land and eco services which provides for the planning area, any detriment to natural position of such zone will further block already suffocating city of Bengaluru etc.; PP has referred to some other constructions in the area in question. Appellant says that neither disputed construction is valid

nor will get any validity on the ground that there are some other constructions existing in the area; Construction activities sprocceeded unabated under the garb of contouring and landscaping with a view to maintain greenery, is nothing, but a culpable exercise to defeat the specific prohibition and environment laws, hence impermissible; the construction activities of PP by building a “Model Flat”, with area 2500 square feet, excavation work and dredging of soil within ‘buffer zone’, though sought to be explained as preparatory steps towards contouring and landscaping but ignores the fact that all these activities come within the meaning of “construction” and that being so, in “No Development Zone”, cannot be said to be valid in any manner; the term “construction” has been considered in ***Forward Foundation & Ors. (supra)*** and Tribunal has held that it covers clearing of land, excavation of land etc., The activities undertaken by PP, as evident from the photographs, (Annexure A/6 to appeal) are self-speaking and demonstrate impermissible, illegal activities of PP in prohibited area; PP has incorrectly stated that Form 1A is merely a guiding factor in as much as it is the very foundation for grant of ‘Prior EC’ and is mandatory under the provisions of EIA 2006 read with EP Act, 1986; SEIAA, Karnataka has acted illegally by failing to discharge their duties of not having verified the information supplied by PP in form IA and instead mechanically acting on the said information and granting EC; PP has pleaded in contrary manner, in as much as on one hand it has been admitted that “Kaikondarahalli Lake” abuts the land, being part of project in dispute, while at another place, it has been said that the lake is situated at a distance of 75 meters from project land; further PP has not disclosed in its application, submitted for EC, that it would develop ‘buffer zone’ around Primary Rajakaluve as a drive way though it is so

mentioned in DPs which has been filed by PP himself as Annexure R/3 to his reply. Construction and development of drive way amounts to construction in 'buffer zone' around primary Rajakaluve and is impermissible; the magnitude of project comprising of a built up area of 1,28,193.9 square meters as disclosed by PP in Form 1A, construction of 655 units in 2 Residential Blocks having two basements with Ground Floor and 20 upper floors, parking for 877 cars, water consumption of 534 KLD (including fresh water), waste water discharge of 482 KLD in an inherently eco-fragile environment within the 'buffer zone' of lake and Rajakaluves is bound to put unsustainable environmental load of the population and would damage Eco-system; the photographs (Annexure A/6 to appeal) also show that soil around Rajakaluves has been excavated to create embankment around the same and stop flow of running water in such nallas which is illegal and contrary to what has been claimed by PP before this Tribunal; the above work has been carried out using heavy commercial vehicles; PP in the garb of contouring and landscaping cannot indulge in activities which *per se* qualify as "construction activities" prohibited in 'No Development Zone' i.e. 'buffer zone' of wetland and Rajakaluves; the gathering of people in the residential accommodations, sought to be constructed by PP, is huge and as is disclosed by it at Sl. no. 28 at Form 1A that about 4014 people are expected in the operation phase and collection of such a huge number of person in an Eco-fragile land abutting the lake and Rajakaluves is bound to cause serious damage to Eco-system of the wetland area; PP having already caused damage to environment by proceedings with construction activities illegally is also liable to pay environmental compensation on the principle of 'Polluter Pays'; Development of land as Park or Open Space

would require leveling of land, concretization, embankment, structural gates, benches etc. and the stand of PP otherwise is incorrect.

OA No. 281/2019-Pleadings:

26. This Original Application No. 281/2019 (hereinafter referred as 'OA-1') was preferred vide application dated 28.02.2019 by a Trust namely, Mahadevpura Parisara Samrakshane Mattu Abhivrudhi Samiti for protection of "Kaikondarahalli Lake", its 'buffer zone', feeder canals/nallas/Rajakaluves and the adjacent area; to restrain Shri Ramesh Kumar (arrayed as respondent-10) from proceeding with construction activities on the land, Survey nos. 71/1, 72/1, 72/2, 74/5B and 73, admeasuring 5 acres 29 guntas, situated within the jurisdiction of BBMP Ward No. 150, (Bellandur Ward), Mahadevapura Zone, Varthur Hobli, Bengaluru. The project is bounded on eastern side by Survey No. 74/4A, West by "Kaikondarahalli Lake", South by Survey no. 72/2 and North by Survey nos. 7 and 6. The grounds of challenge, inter-alia, in brief are, violation of Water Act, 1974, concealment of relevant information showing construction in 'buffer zone' of "Kaikondarahalli Lake"; violation of Rule 14 of EP Act, 1986, Air Act, 1981 and failure to obtain mandatory Consent to Establish and Operate the project, violation of provisions of EP Act, 1986, Municipal Solid Waste Management Rules, 2016 (hereinafter referred to as 'MSWM Rules, 2016'), Public Trust Doctrine, Encroachment of nallas/Rajakaluves; Omission to obtain consent from Central Ground Water Authority (hereinafter referred to as 'CGWA'); violation of directions contained in judgment dated 04.05.2016 in **Forward Foundation & Ors. (supra)**; raising of project in the prohibited area, i.e., (i) the 'buffer zone' of 75 meters from the periphery of the lake; (ii) the 'buffer zone' of 35 meters from the edge of either sides

of the secondary Rajakaluve/nalla; (iii) 'buffer zone' of 25 meters on either sides from the periphery of nallas (judgment in OA No. 125/2017 with 217/2017); (iv) Catchment area of the lake; (v) 'buffer zone' of 30 meters from the periphery of the lake (as per RMP-2015) and, (vi) the 'buffer zone' of 25 meters from the two secondary nallas/Rajakaluves (as per RMP-2015) and violation of Tribunal's order dated 06.12.2018 in ***Court on its own Motion v. State of Karnataka and Ors., OA No. 125/2017*** decided 06.12.2018.

O.A. No. 602/2019-Pleadings:

27. This Original Application (hereinafter referred to as 'OA-2') has been preferred under Section 14 and 15 of NGT Act, 2010 by the same applicant, H.P. Rajanna (appellant in Appeal No. 54/2018) in respect of the same project of PP, M/s. Wonder Projects Development Private Limited with the prayer that PP be stopped from construction of High Rise Residential Apartment project in municipal Khata no. 4131, Survey nos. 61/2, 62 and 63/2, Kasavanahalli village, Varthur Hobli, Bengaluru East Taluk, Bengaluru district. It is further prayed that respondents-9 and 10, i.e., PP, be restrained from creating third party interest in any manner, whatsoever, in respect of disputed project; direct SEIAA, Karnataka to revoke EC in terms of Condition no. 5 of General Conditions of the said clearance read with para 8(vi) of EIA 2006 for submitting false information with regard to scope and configuration of disputed project; direct KSPCB to take affirmative action in accordance with Condition no. 10 under item VIII, General Conditions of Consent to Establish, dated 12.10.2018; declare Building Plan and Building License bearing no. BBMP/Addl. Dr/JD North/LP/0203/17-18 dated 30.08.2018 illegal, invalid, nullity and inoperative and direct BBMP to revoke/cancel the

same; declare DP dated 05.03.2018 illegal, invalid, nullity and inoperative and direct BDA to revoke/cancel the same; direct BBMP to execute Confirmation Order dated 22.06.2018 for demolition of buildings raised on premises in dispute abutting “Kaikondarahalli Lake”; direct respondents to take adequate steps towards restoration of fragile ‘buffer zone’ of “Kaikondarahalli Lake” as well as Rajakaluves and ‘buffer zones’; restore natural hydrology and natural water flow thereof; take penal action and impose deterrent Environmental Compensation upon PP for violation of conditions of EC dated 10.01.2018 and also to recover cost of loss of ecological services and damage done to the environment and ecology; direct penal action and inquiry against erring officials of BBMP for sanctioning Building Plan and Building License dated 30.08.2018, erring officials of BDA for granting DP dated 05.03.2018 by violating directions under Section 5 of EP Act, 1986 read with Karnataka Government’s Gazette Notification no. FEE 316 EPC 2015, Bengaluru, dated 19.01.2016.

28. Facts stated in OA-2 are broadly similar to those stated in Appeal No. 54/2018 hence without repeating, we would give herein distinct and additional averments contained in the application, in brief, as under:-

- a) Applicant being a resident of Planning Area of 3.18 Begur, wherein the present disputed project is sought to be launched, shares the very same Eco-system and entitled to add for protection and prevention of lake pollution and conservation of natural resources including ‘buffer zones’, in exercise of his rights and duties mandated under Article 21, 51A(g) and 48A read with Article 243W Schedule 12 of Constitution of India;

- b) “Kaikondarahalli Lake” is situated on Sarjapur Main Road in Bengaluru city. It is spread over an area measuring 48 acres 23 guntas. In 2007, lake bed was a slushy malarial bed of sewage and waste. Issues of encroachment, growth of unhealthy hyacinths and release of sewage and untreated water into the lake had together spelt the death knell for Eco-fragile lake. It is an urban biodiversity hotspot. Lake once had dried up but turned into an unique example of urban, common rejuvenated project. Local residents and activist along with Municipal Authorities, collaborated and restored lake to its once pristine state. Lake is thriving with new species of flora and fauna as a result of concerted efforts of citizens and officials of Municipal Corporation to maintain the lake.
- c) As an urban biodiversity hotspot, lake has around 43 species of birds, 26 species of reptiles and 3,000 plants comprising at least 33 varieties. It also has about 16 acres of Acacia trees on southern side of the lake;
- d) PP has undertaken construction activities on ‘buffer zone’ of ecologically sensitive “Kaikondarahalli Lake”. Project land is directly abutting the said lake and construction would detrimentally impact hydrology of lake and obstruct natural flow of water therein, through feeder canals in respect of the said lake;
- e) Permissions have been issued for creation of ramp and drive way which would fall within 75 meters of ‘buffer zone’ of lake. From DP dated 05.03.2018, it is clear that there is a nalla passing through adjacent land in Survey no. 57 and 25 meters buffer line for that nalla, falls inside the disputed project. In this 25 meters ‘buffer zone’, permission for construction of 12 meters wide drive way to

carry tremendous load of vehicles including 758 cars has been allowed. Further installation of gas bank/infrastructure of LPG piped gas line has also been approved. Drive way of 12 meters wide continues and passes through primary nalla. Various components of drive way also falls within 50 meters of 'buffer zone' of Primary Rajakaluve (feeder canal) which is within the project land;

- f) DP also indicates another nalla in Survey no. 61/1, adjacent to Survey no. 61/2 and 25 meters 'buffer zone'. In this 25 meters 'buffer zone', permission for 8 meter wide Fire Driveway, installation of an Organic Waste Convertor (hereinafter referred to as "OWC") and installation of gas bank/infrastructure for LPG piped gas line has been approved. This is in violation of the directions issued by Tribunal in ***Forward Foundation & Ors. (supra)***;

- g) The aforesaid constructions on 'buffer zone' of lake and Rajakaluves are in violation of para 4.12.2 of RMP-2015, which reads as under:-

"4.12.2

(ii) Valley/drain

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(iii). In case of water bodies a 30.00 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 thus buffer may be taken into account for reservation of park while sanctioning plans.

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Note:

Drains: The drains have been categorised 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."

- h) It is also in violation of Zoning Regulations of RMP-2015, framed under KTCP Act, 1961;
- i) Two secondary and one primary Rajakaluves directly pass through project site and disputed project site is directly abutting “Kaikondarahalli Lake” and its ‘buffer zone’;
- j) The construction sought to be undertaken also violates Section 24 of Water Act, 1974 which reads as under:-
- “24. Prohibition on use of stream or well for disposal of polluting matter, etc. (1) Subject to the provisions of this section-
- (b) no person shall knowingly cause or **permit to enter into any stream** any other matter which may tend, either directly or in combination with similar matters, to **impede the proper flow of the water of the stream** in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.”
- k) Rajakaluves act as feeder canals for flow of water from the “Kasavanahalli Lake” to “Kaikondarahalli Lake”. Construction, if any, raised on ‘buffer zone’ of these feeder canals would impede natural flow of water;
- l) The construction sought to be raised is also in violation of Wetland Rules, 2017 and judgment of Tribunal in **Forward Foundation & Ors. (supra)**. It also violates Rule 4 of Wetland Rules, 2017.
- m) Construction activities in ‘buffer zone’ and Rajakaluves also violates specific condition in Part A, para 48 of EC dated 10.01.2018 which reads as under:-

“PART A-SPECIFIC CONDITIONS-

48. The **Project Proponent shall leave a buffer of 75 meters from the Lakes, 50 meters from Primary Rajakaluve, 35 metres from Secondary Rajakaluve and 25 metres from Tertiary Rajakaluve** in accordance with the order of the Principal Bench of Hon’ble National Green

Tribunal, New Delhi dated 4th May, 2016 in Original Application No. 222 of 2014 in addition to sufficient buffer from the other water bodies **in accordance of law. The buffer so maintained shall be developed as Greenbelt planting with indigenous tree species such as Neem, Akash Mallige, Mahagoni, Honge, KadambaFicus, etc. and maintained as green belt. No construction activity shall be undertaken in the said buffer zone.**

n) EC dated 10.01.2018 says that PP is strictly bound by site plan/layout plan submitted to SEIAA, Karnataka. Any change in the scope of project would require a fresh appraisal by SEIAA, Karnataka. The said conditions contain in Part A, para 46 and Part B, para 5, reads as under: -

“PART A-SPECIFIC CONDITIONS:
46. The project proponent shall ensure that the **construction activity is undertaken strictly in accordance with the approved site plan/ layout drawing annexed to the Environmental Clearance letter.** However, it is subject to compliance to the provisions of local authorities regarding setbacks, FAR etc. shall be adhered to.

PART B- GENERAL CONDITIONS:
5. In the case of **any change(s) in the scope of the project, the project would require a fresh appraisal by this Authority.**”

o) PP, however, has disclosed different construction areas and activities to SEIAA, Karnataka and KSFES as would be evident from the following chart:-

“

Sr. No.	Basis	Form I and Presentation submitted by PP on the basis of which EC was granted (Oct, 2017)	Inspection Report by the Karnataka Fire Dept. submitted on 07.12.2017	Inspection Report by the Karnataka Fire Deptt. Submitted on 21.03.2018
1	Number of Buildings	Two (2) Towers i.e. Tower A and Tower B	One building i.e. Phase 1 with 3 towers i.e. A, B and C	One building i.e. Block 2 with 4 Towers i.e. Tower A, B, C, D

2	Number of Floors	Tower A and B 2 Basement, Ground and 20 Upper Floors	Tower A and C Each of 2 common basements, common ground floor and 20 upper floors Tower B 2 common basements, common ground floor and 19 upper floors	Tower A Common basement, common ground floor, common 1 st floor and 2nd floor to 13th floor Tower B, C and D Each of common basement, common ground floor, common 1 st floor and 2 nd floor to 20th floor floors

p) The aforesaid chart shows that EC was granted for construction of two towers, A and B, while in the inspection dated 07.12.2017, KSFES refers to three towers, A, B and C in Phase-1 and in Report dated 21.03.2018, it refers to four Towers, A, B, C and D in Phase-2. The structure approved in EC dated 10.01.2018 and found subsequently by KSFES show a clear deviation from the plan submitted to SEIAA, Karnataka;

q) Similarly, construction area disclosed by PP to SEIAA, Karnataka is different from what it is represented to BWSSB; as shown in the following chart:-

Sr. No.	Basis	Conditions approved by the Karnataka State Level Impact Assessment Authority in the Environmental Clearance dated 10.01.2018	Conditions of the NOC granted by the Bangalore Water Supply and Sewerage Board on 30.10.2018
1	Site area	50,382.91 sq. mtr	51,698.16 sq. mtr.
2	Total Built up Area	1,28,193.9 sq. mtr	1,71,755.37 sq. mtr.

r) PP, thus deliberately misrepresented before SEIAA, Karnataka about construction area so as to bring project within Category ‘B’

though as a matter of fact, built-up area proposed was more than 150000 square meters, thus project would fall in Category 'A'. This difference in Category would have required PP to submit an EIA report to seek EC from MoEF&CC which it has failed and this vitiates EC dated 10.01.2018;

- s) PP commenced construction activities without obtaining requisite statutory clearances, on account whereof, BBMP issued Provisional Order under Section 321(1) and (2) of KMC Act, 1976 on 06.06.2018. It was highlighted therein that construction was undertaken by PP without sanctioned Building Plan and Building License hence it has violated provisions of KMC Act, 1976. Thereafter, BBMP also issued a Confirmation Order under section 321(3) of KMC Act, 1976 on 22.06.2018 directing for demolition of unauthorized construction raised on disputed project by PP. The relevant extract of confirmation order reads as under:-

“In view of the aforesaid facts and details it has been fully confirmed to me that the **constructor of the building has constructed the building** on the land bearing Katha No. 4131, Sy. No. 61/2, 62, 63/2, BBMP/Add.Dir/JD/NORTH/0203/ 2017-18 of Haralur Village, Ward No.150, **in violation of the provisions of the Karnataka Municipal Corporations Act, 1976 and building bye laws**. Therefore, it is hereby ordered to demolish the building constructed deviating from the sanctioned plan and in violation of the provisions of the Karnataka Municipal Corporations Act, 1976 and the Rules forthwith and you have received the Provisional Order no. A.E.E. (MSD)/P.O./02/2018-19 dated 06/06/2018 and it is informed that the confirmation order has been passed for the building constructed unauthorizedly and illegally.

You are required to clear the building within 7 days from the date of receipt of this Confirmation Order on your own at your own cost, failing which, the same will be cleared by BBMP and the expenditure incurring thereon will be recovered from you.”

- t) Since, PP continued to violate law, Commissioner BBMP issued notice dated 13.07.2018 and relevant extract thereof reads as under:

“7. The Project Proponent has not submitted the mandatorily required consent to Establish (CFE) from the Karnataka State Pollution Control Board under the Water Act, 1974 and also the mandatory NOC from the BWSSB as required under the BBMP Bye Laws and that both the said mandatory permissions are required to be submitted to the BBMP while seeking approval for sanction of Building Plan and Building License.

8. In fact, the ground position in the project lands discloses that the **project proponents have raised constructions of Ground Floor and First Floor and have illegally and unauthorizedly constructed model flat measuring 2500 square feet** and there is ongoing constructions continuing in the absence of any Building Plan and Building License from the BBMP and even in the absence of written permission from the BBMP for the purpose of putting up any construction in the project lands. In fact, there is clear violation of Section 300 of KMC Act. Therefore, the **said constructions in the project lands are completely illegal** and are required to be demolished.

...

11. Moreover, BBMP cannot issue building plan and building license on basis of any type of permissions that are in violation of zoning regulations i.e. Regulation No. 4.12.1 and RMP-2015 framed under the provisions of the Karnataka Town and Country Planning Act, 1961. Consequently, there is non-compliance of the Karnataka Town and Country Planning Act, 1961 and **hence in view of Section 505(ii) of KMC Act, 1976 BBMP shall not grant any permission, approval or sanction under the KMC Act.”**

- u) However, subsequently, without any change in the circumstances, on 30.08.2018, BBMP issued Building Plan and Building License in favour of PP despite the stand that application submitted by PP was invalid and it (PP) acted in violation of statutory provisions by raising constructions without permissions. This shows subsequent management and collusion between PP and BBMP.
- v) KSPCB issued ‘Consent for Establishment’ on 12.10.2018 and ‘No Objection Certificate’ was issued by BWSSB on 30.10.2018.

Sanctioning of Building Plan and Building License by BBMP and DP by BDA prior to issue of mandatory prior Consent to Establish under Section 25 of Water Act, 1974, is in violation of directions issued by State of Karnataka under Section 5 of EP Act, 1986. The directions of State Government are contained in Gazette Notification dated 19.01.2006 and table 1, containing details of authority concerned to whom the directions are issued, and directions contained in column 3; Sl. No. 1 to 5 of the Table extracted (relevant for the present case), read as under:-

“

Sl. No.	Designation of the Authority issued with the direction under section 5 of Environment (Protection) Act, 1986	Direction under section 5 of Environment (Protection) Act, 1986
1	The Commissioner, Bruhath Bengaluru Mahanagar Palike (BBMP), N.R. Square, Bengaluru-560002	Shall approve plan for construction of buildings and development of layout in respect of activities listed in Table-2 of this notification only after production of copy of Consent for Establishment (CFE) issued under the Water (Prevention and Control of Pollution) Act, 1974 by the Karnataka State Pollution Control Board for establishment of sewage treatment plant of appropriate capacity.
2	The Commissioner, Bangalore Development Authority (BDA), T. chowdaiah Road, Kumara Park West, Bengaluru-560020	
3	The Commissioner, the Bangalore Metropolitan Region Development Authority (BMRDA), No. 1, All Askar Road, Bengaluru-560052	
4	The Commissioner of all the City Corporations in the State	
5	The chairman, Bangalore Water Supply and Sewerage Board (BWSSB), Cauvery Bhavan, Bengaluru-560009	Shall provide water connection to the activities covered under this direction in Table-2 only after production of copy of Consent for Establishment (CFE) issued under the Water (Prevention and Control of Pollution) Act, 1974 by the Karnataka State Pollution Control Board for establishment of sewage treatment plant of appropriate capacity.

”

w) Part A, Clauses 47, 49 and 50 of EC dated 10.01.2018 restrained PP from altering natural hydrology of water bodies passing through project lands and the same read as under:-

“PART A-SPECIFIC CONDITIONS-

47. The **existing water body, canals and Rajakaluve and other drainage and water bound structures shall be retained unaltered with due buffer zone as applicable and maintained under tree cover.**

49. The **natural slopping pattern of the project site** other than the area excavated for the purpose of construction of proposed building **shall remain unaltered** and the **natural hydrology of the area be maintained** as it is to ensure natural flow of storm water.

50. **Lakes and water bodies** within and/or at the vicinity of the project area **shall be protected and conserved.”**

(Emphasis added)

x) However, violating above conditions, PP has undertaken construction. It directly obstructs the flow of water into “Kaikondarahalli Lake” and thereby alters water regime and ecosystem of wetland, resulting in loss of ecological services. BBMP in its show cause notice has also highlighted that PP would be raising ground level of project land by excavating large quantity of earth inside prohibited area of ‘buffer zone’ of lake, abutting project lands and Rajakaluves, passing through project land, and thereby damming and creating vital embankment within the catchment area. From DP issued by BDA, it is evident that PP would carry out construction within prohibited zones, as is evident from following:-

- i. In respect of ‘buffer zone’ of the “Kaikondarahalli Lake”: PP has sought to create a ramp and a driveway.
- ii. In respect of ‘buffer zone’ of Primary Rajakaluve: PP has sought to construct a 12m drive way.
- iii. In respect of ‘buffer zone’ of Secondary Rajakaluve passing through Survey no. 57: PP has sought to construct a 12

meters wide drive way and installation of gas bank/infrastructure for LPG piped line.

iv. In respect of 'buffer zone' of Secondary Rajakaluve passing through Survey no. 61/1: PP has sought to construct 8 meter wide Fire Driveway, installation of an Organic Waste Converter and a gas bank/infrastructure for LPG piped gas line.

y) PP has sought to expand/diversify project by altering number of units in violation of EC conditions, 'Consent to Establish' and the provisions of EIA 2006.

z) Similar constructions on the land comprising Survey nos. 71/1, 72/1, 72/2, 74/5B and 73 were found to have direct adverse impact on the ecology of the area, by this Tribunal in **OA No. 281/2019, Mahadevpura Parisara Samrakshane Mattu Abhivrudhi Samiti v. Union of India & Ors.**, i.e. OA-1, in view of Joint Committee's Report dated 11.04.2019 and 23.09.2019 and facts stated therein would apply to the project in dispute of present PP also.

29. In support of various grounds taken by applicant in OA-2, as noticed above in brief, he has also relied on certain authorities of Supreme Court and this Tribunal, i.e., **N.D. Jayal & Anr. v. Union of India & Ors., (2004) 9 SCC 362; Ritesh Tewari & Anr. v. State of UP & Ors., (2010) 10 SCC 677; Himani Alloys Ltd. v. Tata Steel Ltd., (2011) 15 SCC 273; Divya Granites v. Karnataka State Pollution Control Board, 2013 SCC Online NGT 49; Andhra Pradesh Pollution Control Board v. B.V. Naidu, (2001) 2 SCC 62; Anirudh Kumar v. MCD, (2015) 7 SCC 779; State of U.P. v. Singhara Singh, (1964) 4**

SCR 485; Goel Ganga Developers India Pvt. Ltd. v. Union of India & Ors., (2018) SCC Online SC 930; Forward Foundation & Ors. (supra); Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496; M.K. Balakrishnan & Ors. v. Union of India & Ors., (2017) 7 SCC 810 (2); Diwan Singh & Anr. v. Union of India & Ors., OA No. 299/2016; judgment dated 01.11.2016; Mahadevpura Parisara Samrakshane Mattu Abhivrudhi Samiti v. Union of India & Ors., OA No. 281/2019; M.C. Mehta vs. Union of India & Ors., (1987) 4 SCC 463; M.C. Mehta v. Union of India, (2004) 12 SCC 118; M.C. Mehta v. Union of India, WP(C) No. 4766/1985; order dated 11.07.2018.

Chronology of the proceedings in all three cases:

30. Appeal No. 54/2018 was filed along with MA No. 542/2018 (for seeking condonation of delay) on 09.04.2018. It was registered on 12.04.2018 and placed before Tribunal on 13.04.2018. Notices were issued to respondents on MA No. 542/2018. On 01.05.2018, respondents-2 to 12 were represented and sought further time to file replies which was granted. MA No. 542/2018 was heard on 01.10.2018. The same was allowed, delay in filing appeal was condoned and, thereafter, respondents were given liberty to file response to the main case.

31. On 08.03.2019, OA No. 281/2019, i.e., OA-1 was filed. It was registered and placed before Tribunal on 11.03.2019. Considering the dispute, Tribunal vide order dated 11.03.2019 constituted a joint Committee comprising of CPCB, KSPCB, BBMC and BDA (hereinafter referred to as 'First Joint Committee') and required it to submit report within one month. An interim Report was submitted by First Joint

Committee vide letter dated 11.04.2019. A further report was submitted by KSPCB on 27.04.2019.

32. The aforesaid report of first Joint Committee said that respondent, Shri. Ramesh Kumar (PP in OA-1) had violated statutory provisions, illegally constructed buildings in Survey nos. 71/1, 71/2, 72/2, 73 and 74/5B of Kasavanahalli Village, Varthur Hobli, Bengaluru, submitted fabricated documents for getting power connection, has affected environment, ecology and feeder canals of “Kaikondarahalli Lake”, is the area which is Ecologically Sensitive Zone. Relevant extract of interim report of First joint Committee, in para 2 to 7, read as under:

- “2. As reported by the committee **Kaikondrahalli Lake** is spread over in an area of 18 acres 18 guntas in Sy No 8 of Kainkondrahalli village and 30 acres 5 guntas in Sy No 70 of Kasavanahalli village. **Three feeder canals drain water into the Lake.** As reported the Lake was rejuvenated during 2011 and as **a part of rejuvenation two sewers are laid for diverting the sewage flowing into the Lake.** The team while inspecting the area, have found the sewage overflowing from the chambers of the sewer lines and on intimation by the team, the same was rectified by the authorities of BBMP.
3. The team has reported that **Respondent No 10 has constructed many small houses with an approximate built up area totaling to 7755 Sq. Mts** spread out in Sy No 71/1, 71/2, 72/2, 73 and 74/5B of Kasavanahalli village. All the houses are electrified and an independent transformer is also provided by the Bangalore Electricity Supply Company (BESCOM) authorities. The details of the power supply sanctioned by the authorities are furnished in the inspection report. **The solid waste and the wet waste from the houses are dumped adjacent to the lake. Construction debris was also heaped close to the Lake. The houses are not provided with sewers and sewage treatment plant resulting in sewage stagnating in the feeder canals which are draining into the Lake.** The water supply to all the houses is through a bore well sunk in the respondent's property.
4. The team on ascertaining the legality of the building's constructed and power supply taken from the BESCOM found that the **Respondent has constructed the houses without obtaining any sanction from BBMP** as the area falls in ward number 150 of BBMP. The report further confirms that, the Town Planning Division of **BBMP in their letter dated 9.4.2019 stated that the Respondent has not taken any sanction for the construction of the buildings**, hence the power sanctioned by the BESCOM appears to be based on fabricated building plan documents.

5. The team in its report has submitted that ADLR requested for more time for submitting the survey sketch as they are deputed for the general Elections. The inspection report of the joint inspecting team along with seven annexure is enclosed to the interim as document D-1.
 6. The Assistant Director town planning, Mahadevapura zone has written letter dated 10.4.2019 to the Executive Engineer BESCOM for disconnecting the power to the building's purported to be illegally constructed by Respondent 10 by fabricating documents in support of building sanction. The copy of the letter written by Assistant Director Town Planning BBMP is enclosed as document D-2.
 7. The joint inspection report reveals that, the **Respondent has violated all the statutory provisions and constructed building in Sy No 71/1, 71/2, 72/2, 73 and 74/5B** of Kasavanahalli village. Further, **fabricated documents were used for getting the power connections to the buildings illegally constructed.** The above illegal activities of the Respondent are affecting the Environment, Ecology and feeder canals of Kaikondrahalli Lake. The **area is in ecologically sensitive zone**, will have an adverse effect with these illegal activities. Once the ADLR submits the detailed survey report of Kaikondrahalli Lake the final report will be submitted for placing it before the Hon'ble Green Tribunal, Principal bench, New Delhi."
33. The Members of First Joint Committee who signed report, comprised of the following:
- 1) Dr. Madhusudanan, Additional Director, CPCB;
 - 2) Sri Sadiq Ahamed, Senior Environmental Officer, BNG-South, KSPCB;
 - 3) Sri Nagarajappa K.B, village Accountant, Bangalore East Taluk, Taluk Office;
 - 4) Sri Munireddy, Executive Engineer, Mahadevapura Division, BBMP;
 - 5) Sri K.Mahadevgowda, Executive Engineer, East Division, BDA.
34. In the report submitted by KSPCB, it was informed that a show cause notice under Section 24 of Water Act, 1974 has already been issued to Shri Ramesh Kumar (PP in OA-1) and a letter was issued to Executive Engineer, BESCOM for disconnecting power supply to the buildings constructed by Shri Ramesh Kumar. KSPCB thus, also

acknowledged that the buildings raised by Shri Ramesh Kumar (PP in OA-1) are illegal.

35. Both these reports were considered by Tribunal on 09.05.2019. Noticing observations made by First Joint Committee, Tribunal permitted KSPCB to take further action which may include recovery of compensation for the damage caused for restitution of environment, and prosecution of persons responsible for violating the law. A further Action Taken Report was required to be submitted within next two months. Relevant extract of Tribunal's order dated 09.05.2019, in para 3, 4 and 5, reads as under:

"3. Accordingly, a report has been received vide letter dated 11.04.2019 concluding as follows:-

*"The joint inspection report reveals that, the Respondent has violated all the statutory provisions and constructed building in Sy. No. 71/1, 71/2, 72/2, 73 and 74/5B of Kasavanahalli village. Further, fabricated documents were used for getting the power connections to the buildings illegally constructed. The **above illegal activities of the Respondent are affecting the environment, ecology and feeder canals of Kaikondarahalli Lake. The area is in ecologically sensitive zone,** will have an adverse effect with these illegal activities. Once the ADLR submits the details survey report of Kaikondarahallilake and the final report will be submitted for placing it before the Hon'ble Green Tribunal, Principal Bench, New Delhi."*

4. Further report dated 27.04.2019 has been filed by KSPCB to the effect that Board has issued show cause notice to the project proponent for violation of Section 24 of the Water (Prevention and Control of Pollution) Act, 1974 and also written a letter to the Executive Engineer BESCO for disconnecting the power to the building constructed illegally, by fabricating documents.

*5. In view of the acknowledged fact that the project has been illegally constructed, the **KSPCB may take further necessary action which may include recovery of compensation for the damage caused for restitution of environment and prosecution of the persons responsible for violating the law.***

Prayer of the applicant for closure order may also be considered. The applicant will be at liberty to give an updated representation of the action which is required to be focused for restoration of the environment which may be expressly adverted to in the report.

A report of further action taken may be furnished within two months by e-mail at ngt.filing@gmail.com. The KSPCB may coordinate with BBMP and Bangalore Development Authority.”

(Emphasis added)

36. Against order dated 09.05.2019, PP, Shri Ramesh Kumar preferred Civil Appeal No. 5195/2019, *Ramesh Kumar v. Mahadevpura Parisara Samrakshane Mattu Abhiwrudhi Samiti (MAPSAS) & Ors.* which was dismissed by Supreme Court on 05.07.2019. The order reads as under:

“We find that the order passed by the Tribunal is absolutely proper. Thus, we are not inclined to interfere with the impugned order passed by the Tribunal. The civil Appeal is, accordingly, dismissed.

Pending interlocutory application(s), if any, is/are disposed of.”

37. Against order of KSPCB that construction of PP, Shri Ramesh Kumar was illegal, he filed Appeal No. 23/2019 before this Tribunal, which was disposed on 02.08.2019 and relevant extract of order reads as under:-

*“3. On being asked, learned counsel fairly accepts the appellant **does not have any sanction for the construction of any building nor any sewerage system.***

*4. **We are thus unable to grant any relief in view of the construction of the appellant being without any sanction plan and in view of the finding in impugned order that the sewage was flowing from the house of the appellant into the open drain which is undisputed.** The appellant could have approached the State PCB if no notice was served or if the allegations in the impugned order are disputed.*

5. Accordingly, while declining to interfere in the appeal, we make it clear that it is open to the appellant to approach the State PCB to show that the findings in the impugned order are incorrect and that the appellant has not violated the pollution norms.”

(Emphasis added)

38. On 08.07.2019, Appeal No. 54/2018 was directed to be listed with OA No. 281/2019 in view of the statement made by counsels for parties that the lake to which construction disputed in Appeal No. 54/2018, abutting, is a matter of consideration in the said OA wherein issue is regarding “buffer zone of the lake”.

39. Appellant- H.P. Ranjanna who had filed Appeal No. 54/2018 also filed OA No. 602/2019, i.e., OA-2 which was registered on 17.07.2019 and considered by Tribunal on 19.07.2019. Noticing contents of the issues raised by applicant, Tribunal constituted a Joint Committee comprising of CPCB, Karnataka SEIAA and KSPCB as also M/s. Wonder Projects Development Private Limited, i.e., PP and its holding company M/s. Godrej Properties Limited (hereinafter referred to as 'the Second Joint Committee'). KSPCB was made nodal agency for co-ordination and compliance. Relevant extract of order dated 19.07.2019 reads as under:

*"2. According to the applicant, the **project is in prohibited area of buffer zone of the lake and the Rajakaluves crossing the project lands. The area is eco-fragile zone.** Environmental Clearance was granted on 10.01.2018 against which an appeal is pending and is fixed for 13.08.2019. The Environmental Clearance is in violation of order of this Tribunal dated 04.05.2016 in O.A. No. 222/2014, Forward Foundation vs. State of Karnataka and Ors. against which an appeal was decided by the Supreme Court vide judgment dated 05.03.2019 in Civil Appeal No. 5016/2016, Mantri Techzone Pvt. Ltd. vs. Forward Foundation &Ors.*

*3. In view of above, let a factual and action taken report in the matter be furnished by **joint Committee representing Central Pollution Control Board (CPCB), Karnataka State Environment Impact Assessment Authority (SEIAA), Karnataka State Pollution Control Board (KSPCB), Wonder Projects Development Pvt. Ltd. and Godrej Properties Ltd.** The SPCB will be the nodal agency for coordination and compliance. The report may be furnished within one month by e-mail at judicial-ngt@gov.in."*

(Emphasis added)

40. The names of PP & M/s. Godrej Properties Limited, it appears were wrongly added, hence IA No. 439/2019 was filed in OA No. 602/2019 seeking modification of order dated 19.07.2019 by deleting above two names from Joint Committee and for further direction. It was considered on 29.07.2019. The names of PP, i.e., M/s. Wonder Projects Development Private Limited and M/s. Godrej Properties Limited were deleted. Applicant, however, also objected to inclusion of SEIAA, Karnataka and KSPCB as members of Joint Committee but that was rejected. However,

Tribunal added a representative of MoEF&CC as part of Second Joint Committee. Thus, Second Joint Committee came to be comprised of CPCB, SEIAA, Karnataka, KSPCB and a representative of MoEF&CC.

41. Against Tribunal’s orders dated 19.07.2019 and 29.07.2019 passed in OA No. 602/2019, Applicant-H.P. Rajanna filed Civil Appeal No(s). 7255-7257-2019 but the same was dismissed by Supreme Court vide order dated 20.09.2019. Order reads as under:

*“Heard the learned Senior Counsel appearing for the appellant.
We do not find any reason to interfere with the impugned orders dated 19.07.2019 and 29.07.2019 passed by the National Green Tribunal, Principal Bench, New Delhi.
Accordingly, the **appeals are dismissed.**
Pending application stands disposed of.”*

(Emphasis added)

42. First Joint Committee submitted final report dated 18.09.2019, which was received by Tribunal through Member Secretary, KSPCB’s letter dated 23.09.2019 (hereinafter referred to as Report dated ‘18.09.2019/23.09.2019’). The report says that Department of Survey, Settlement and Land Records and Revenue Department submitted a detailed survey report of “Kaikondarahalli Lake” buffer area and found following survey numbers adjoining the said lake :

“

S.No.	Village	Survey Numbers
1	Kaikondrahalli, Varthur Hobli, Bangalorek east Taluk	Sy. Nos. 3, 5, 6, 7, 9, 10, 11 and 14
2	Kasavanahalli, Varthur Hobli, Bangalore east Taluk	Sy. Nos. 39, 40, 62, 63, 68, 69, 71, 72 and 73

”

43. The findings of First Joint Committee in respect of existing properties in “Kaikondarahalli Lake” buffer area and violations noticed are as under:

S. No.	Village	Sy No.	Activity	Violation of Buffer
A	Kaikondrahalli	3	Vacant site	No Violation
		5	Vacant site	No violation
		6	Grave Yard	Not a permitted activity
		7	Vacant Site	No violation
		8	Establishing cross road, Commercial buildings where Ananda Sweet and Nanda's Multicusine, Sri Rajrajeshwari condiments shop, 3M Car Care and Bengaluru fruits and vegetables shop	Portion of lake area is encroached
		9	Renuka High School with play ground and toilet, Sports Centre, Raksha Car service, Residential building and Private car service garage in buffer zone.	Not a permitted activity
		10/3	Private grocery shops and commercial establishment in the buffer zone	Not a permitted activity
		11	Kidzee School and cross road established	Not a permitted activity
		11/2	Sri Mitra Builders & Developers, established residential apartment by name "Sri Mitra Spring Valley"	The project authorities have established, swimming pool, club house and approach road in the lake buffer area, which is not permitted activity.
		11/2	ALPS Prime Spaces Pvt Ltd, established residential apartment by name" Alps estate	South east portion of the project area where STP and Exit gate situated is in buffer area, which is not permitted activity.
		14	Private building and commercial establishment in the buffer area.	Not a permitted activity.
B	Kasavanahalli	39	C & D wastes are dumped and used for Solid Waste segregation by BBMP contractor.	C & D waste debris shall be removed and solid waste segregation has to be stopped by BBMP. Not a permitted activity.
		40	There is no construction activity except establishment of temporary labour shed after some distance.	BBMP has to verify whether these shed falling under buffer or not.
		62	Godrej by name "Wonder Projects Development Pvt. Ltd" have obtained Environmental Clearance from SEIAA and consent for establishment from KSPCB and for establishment of residential apartment in Sy Nos. 61/2, 62 and 63/2. There is Nala within the project area which connects Kasavanahalli tank to Kaikondrahalli Tank. Project under construction.	Sy No. 62 and 63 falls under Lake buffer area. As there is separate O.A 602/2019 on this project, the same will be inspected by the committee as per the order dated 19.7.2019 and separate report will be submitted by the committee.
		63/1	Vacant site	No Violation

		68	SJR Enterprises Pvt. Ltd., established Residential Apartment by name SJR Water Mark	Project authorities have established rain water harvesting tank, park, tennis court and portion of drive way at 1 acre 17 guntas falling under the buffer area.
		69	There are some residential building and establishment of park and road in the lake buffer area.	Not a permitted activity
		71/2 72/2 73	Residential sheet houses constructed in the area of 1 acre 4 guntas and 1 acre 6 guntas is vacant. Further, the owner of the Sy No. 72/2 is started leveling land adjoin to the lake. Sheet building construction in Sy No. 73 still exists.	Not a permitted activity
		71/1 71/2 72/1 72/2 73 74/5B	Nala Khrab of Sy No. 71/1 of 1 gunta, 71/2 of 1 gunta, 72/1 of 1 gunta, 72/2 of 2 guntas, 73 of 01 guntas, 74/5B of 3 guntas and 74/5B of 4 guntas of Halla Khrab is encroached and nala area is being used for approach road.	Not a permitted activity

44. First Joint Committee also observed that certain properties/projects have already obtained EC from SEIAA, Karnataka and Consent to Establish and Operate from KSPCB and those projects and survey numbers are as under:-

- “a) Sy. No. 68: SJR Enterprises Pvt. Ltd., established Residential Apartment by name SJR Water Mark;
- b) Sy. No. 11/2: Sri Mitra Builders & Developers, established Residential Apartment by name “Sri Mitra Spring Valley”.
- c) Sy. No. 11/2: ALPS Prime Spaces Pvt. Ltd., established Residential Apartment by name “Alps estate”.
- d) Sy. No. 61/2, 62 and 63/268: Godrej by name “Wonder Projects Developments Pvt. Ltd.”- under construction”

45. Thereafter, First Joint Committee made its observations/recommendations as under:

- “
- There are **three main feeder drains to the Kaikondrahalli Lake, one on South Eastern side, second on Western Side and third one towards Southern Side of the lake.** The total lake area is 48 acres 23 Guntas.
 - The lake is **rejuvenated jointly by BBMP & MPSMAS in**

the year 2011 with two sewage diversion lines to restrict and stop the entry of untreated sewage, one on the western side and another from southern side towards east. The manhole chambers provided in the diversion line, i.e., from southern to eastern side was found overflowing and untreated sewage is entering to the lake. Other than this, there is no sewage entry into the lake as the diversion pipe line provided towards eastern and western side of the lake. BWSSB has to clear the diversion line to avoid the overflowing of sewage from the manhole into the lake and plan to have a terminal Sewage Treatment Plant to treat the entire sewage and only to allow the storm water to the lake through wetland.

- **BBMP storm water drain, Mahadevapura Zone marked the drain area which is originating from Kasavanahalli Road to the lake from eastern side and work pertaining to restoration of the drain is in progress.**
- BESCOM authorities have disconnected the power supply to residential houses in Sy. No. 71/1, 71/2, 72/1, 72/2, 74/5B and 73 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk, Bengaluru urban district.
- **The residential sheet houses constructed at Sy No. 72/2 coming under the lake buffer area are demolished.** But, residential houses constructed in Sy No. 73 are still exists, the same need to be removed. **Vacant area of the Sy. No. 71/2 and 72/2 adjoining to lake is being filled with new soil for levelling.**
- Sy No. 71/2: The land **adjoining to lake is being used for solid waste segregation by BBMP**, the same need to be stopped and segregation of waste are to be done at the generation and collection point itself. The dumping and segregation of solid waste at the lake belt to be stopped and cleared.
- Sy No. 39: **The land adjoining to lake is being used for dumping of C&D waste**, BBMP shall be directed to **take appropriate steps to clear the same.**
- The temporary labour sheds constructed and existing in Sy No. 40 need to be verified by the BBMP whether the sheds are within Lake Buffer or not and to take appropriate action.
- The concern authorities shall be directed to take appropriate action to clear the violations/encroachment noticed in the existing properties & activities in the buffer area.”

46. On 03.02.2020, Appeal, OA-1 and OA- 2, all three matters came up for hearing. By separate orders, all three matters were decided.

47. Appeal No. 54/2018 was allowed after considering the response of respondents and First Joint Committee's reports dated 11.04.2019, 23.09.2019 and KSPCB's report dated 27.04.2019. It was held that project in dispute was not permissible to be accepted; No EC could have been granted permitting construction in buffer zone of lake and drains merely by imposing condition that no construction will be raised. EC was quashed and SEIAA Karnataka, KSPCB, BBMP and BDA were directed to take further action in accordance with law.

48. OA No. 281/2019 was disposed of in the light of First Joint Committee's interim report dated 11.04.2019, and final report dated 27.04.2019. Para 8 and 9 of order, disposing OA-1, read as under:

"8. We may also mention that by separate order passed today in Appeal No. 54/2018, it has been held that no constructions are permitted in the buffer zone and EC granted for a project covering buffer zone has been quashed. We direct the BBMP, BDA, SEIAA, Karnataka and State PCB to proceed in accordance with the factual report furnished to this Tribunal noted above in respect of all the violators.

9. It is stated on behalf of the applicant that he has objections to some constructions having not been declared illegal in the above report. To that extent, we reserve liberty to the applicant to move the concerned authorities in the first instance. Any such representation may be looked into and decided within one month. If the applicant is still aggrieved, he can take his remedies in accordance with law with regard to either the present area or the one adjoining Kasavanahalli lake."

49. Another separate order was passed on 03.02.2020 in OA No. 602/2019. Relying on First Joint Committee's report dated 23.09.2019, OA-2 was disposed of observing that by separate orders passed on the same date in Appeal No. 54/2018 and OA No. 281/2019, the reports dated 11.09.2019 & 23.09.2019 have been directed to be acted upon by the concerned authorities, hence no further order is necessary as the

issue raised is already covered by the above orders, hence application stands disposed of.

50. Aggrieved by judgment/order dated 03.02.2019, passed in Appeal No. 54/2018, PP, M/s. Wonder Projects Development Private Limited preferred **Civil Appeal No. 1713/2020** under Section 22 of NGT Act, 2010 which was heard in Supreme Court on 02.03.2020. While issuing notices, Court directed that the report of Second Joint Committee appointed in OA No. 602/2019, i.e., OA- 2 shall be filed in the Registry of Supreme Court. The order reads as under:

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

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

List the matter after three weeks.

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

51. Consequently, Second Joint Committee submitted report dated 29.06.2020 in Supreme Court on 14.07.2020. The report shows that KSPCB constituted a Committee of following members:

- i.) Dr. Murali Krishna, Scientist-D, MoEF&CC,
- ii.) Shri G. V. Ravi Prasad, Scientific Officer, SEIAA, Karnataka,
- iii.) Shri. G. Thirumurthy, Additional Director, Regional Directorate, CPCB and
- iv.) Shri Shanmukhappa, Senior Environmental Officer, KSPCB.

52. The site inspection was made on 26.07.2019 by Committee members but those who actually visited site comprised of some different members as is evident from para 6 of the report :

- i.) Shri **G. V. Ravi Prasad**, Scientific Officer, SEIAA, Karnataka,
- ii.) Shri **G. Thirumurthy**, Additional Director, Regional Directorate, CPCB,

- iii.) Shri Sadique Ahamed, Senior Environmental Officer, KSPCB,
- iv.) Shri Anil Kumar M., Environmental Officer, KSPCB,
- v.) Smt. Malathi, Executive Engineer, BBMP and
- vi.) Shri David, Supervisor, Assistant Director Land Records.

53. In this inspection team, Shri G.V. Ravi Prasad and Shri. G. Thirumurthy, were the members who were appointed in Committee by KSPCB. Shri Sadique Ahamed was member in First Joint Committee and remaining three were not members of the Committee constituted by KSPCB but they visited the site as part of inspection team.

54. Another inspection was made on 13.12.2009 and the persons constituted inspecting Committee members consisted of the following:

- i.) Shri Ravi Kumar, J.K. Scientific Officer, SEIAA, Karnataka,
- ii.) Shri **G. Thirumurthy**, Additional Director, Regional Directorate, CPCB,
- iii.) Shri **Shanmukhappa**, Senior Environmental Officer, KSPCB,
- iv.) **Dr. Murali Krishna**, Scientist-D, MoEF&CC,
- v.) Shri Jayasimha, Assistant Executive Engineer, BBMP and
- vi.) Shri David, Supervisor, Assistant Director Land Records.

55. Third inspection was made on 05.02.2020 by Joint Committee through the following members:

- i.) Dr. Dola Chatterjee, Scientific Officer, MoEF&CC,
- ii.) Shri **G. Thirumurthy**, Additional Director, Regional Directorate, CPCB,
- iii.) Shri **Shanmukhappa**, Senior Environmental Officer, KSPCB,
- iv.) Shri Anil Kumar, Environmental Officer, KSPCB,
- v.) Shri Jayasimha, Assistant Executive Engineer, BBMP and
- vi.) Shri David, Supervisor, Assistant Director Land Records.

56. Ultimately, report has been signed by following members:

- i.) Dr. Murali Krishna, Scientist-D, MoEF&CC,
- ii.) Shri Ravi Kumar, J.K. Scientific Officer, SEIAA, Karnataka,
- iii.) Shri G. Thirumurthy, Additional Director, Regional Directorate, CPCB and
- iv.) Shri Shanmukhappa, Senior Environmental Officer, KSPCB.

57. Second Joint Committee has referred to Building Plan sanctioned by BBMP giving details of the site area, and number of flats , as under:

“The Bruhath Bangalore Mahanagara Palike (BBMP) has sanctioned the building plan for the construction of Block 1 on 30.08.2018 and the plan is further modified inclusive of Block 2 on 28.05.2019 with validity up to 27.05.2021 (3 years) as per the Zoning Regulations of Revised Master Plan-2015 and Building Bye Laws-2003. The sanction accorded is only for Residential Use. The total built up area and FAR area of the project is:

- Site Area : 51,698.16 m²
- Area deducted under kharab : 1,315.21 m²
- Net Site Area : 50,382.95 m²
- Area Reserved for Park & Open spaces : 05,093.87 m²
- Area Reserved for Civic Amenities :02,540.66 m²
- Net Site Area for Residential Development (95%) :47,842.29 m²

The said project will be having two Blocks, constructed in two phases (Godrej Reflections Phase-1 and Godrej Lake Gardens Phase-2), the details are:

Block/ Phase	Basement Floor	Ground Floor	Upper Floor	Height (m)	No. of Units	Ground Coverage Area (m ²)
1	2	1	20	60.15	265	5,202.76
2	1	1	20	60.15	360	5,622.84
Total					625	10,825.60

58. Describing boundaries of project, report says that on North side is “Kaikondarahalli Lake”.

59. Details of various NOCs/Permissions/Clearances obtained by PP are given in para 3.0 of the reports as under:

“

S. No.	Approval Obtained	Date	Department / Authority
1.	Land conversion Agricultural to Non-Agricultural Residential Purposes ➤ Sy. No. 61/2 - 3 Acres 05 Guntas ➤ Sy. No. 62 - 3 Acres 02 Guntas ➤ Sy. No. 63/2 - 6 Acres 21 Guntas	31.03.2006	DC- Bangalore Urban District
2.	NOC for height clearance	21.09.2016	AAI
3.	NOC for height Clearance	20.12.2016	BSNL
4.	Permission for Construction of RCC Drain & RCC culvers	02.08.2017	BBMP
5.	Change of Land use from Industrial (Hi-	24.10.2017	UDD

	Tech) to Residential		
6.	Confirmation letter of Change of Land Use	08.12.2017	BDA
7.	NOC for Construction –Block 1 for Fire & Emergency Services	22.12.2017	Director General of Police
8.	Issue of Environment Clearance	10.01.2018	SEIAA-Karnataka
9.	NOC-Temporary Power connection	31.01.2018	BESCOM
10.	Relinquishment of area for the Park and Open Space	19.02.2018	BDA
11.	Lay out plan approval-Block 1	07.03.2018	BDA
12.	Registration Certificate of Project	29.03.2018 & 25.05.2019	Real Estate Regulatory Authority (RERA)
13.	NOC for Construction-Block 2 for Fire & Emergency Services	20.04.2018	Director General of Police
14.	Consent to Establishment	12.10.2018	KSPCB
15.	NOC-for Water supply & UGD	30.10.2018	BWSSB
16.	Modified Plan Sanction approval-Block 2	28.05.2019	BDA
17.	Civic Amenities Site Building Plan Approval	29.11.2019	BDA

”

60. With respect to drains, report says that there are two secondary drains passing though Survey no. 63, one single drain originating in Survey no. 61 and one Pillu Kaluve, adjacent to Survey no. 63.

61. With regard to construction found on the spot, report shows as under:

- “a. The project proponent has **constructed model house** at Western **north corner of the said land** and the same is being **used as site office by the project proponent**. The total area of construction is about 2500 Sq. ft, presently there are about 12 employees working.
- b. The **Civil construction of Block-1** at southern east side of the project site **in progress**. (Photograph skipped)
- c. Similarly, the **earth working of Block-2** at **western side** of the project **site started**. (Photograph skipped)

d. The project proponent is **constructing the box type storm water drain passing within the project site**. The Joint Committee Members requested the BBMP and ADLR officials to furnish details of the Report on Drains and Buffers maintained and necessary approval for the same. (Photograph skipped)”

62. In respect of buffer area, Committee has referred to RMP-2015; EC dated 10.01.2018 and stand of BDA and, thereafter, made its observation in the form of chart, as under:

“	Judgment of Hon’ble NGT in OA 222/2014, dated:14.05.2016	Judgment of Hon’ble Supreme Court in Civil Appeal No. 5016/2016 dated: 05.03.2019	Actual Buffer Zone maintained by the project proponent
	A. From Lake Boundary		
	➤ 75 m from the periphery of water body to be maintained as green belt and buffer zone	➤ Minimum 30 m buffer zone to be maintained from Lake Boundary	➤ As per report, the measured distance from Lake edge to Block-1 Building line is ranges between 77.45m to 77.9m, which is complying with Buffer zone. ➤ The distance from Lake edge to Block-2 Building line is 79.40m, which is also complying with Buffer zone.
	B. From Primary Drain/nala		
	➤ 50 m from the edge of the primary Rajakaluves	➤ Minimum 50 m buffer from middle of drain.	➤ No Primary Drain , not applicable
	C. From Secondary Drain/nala		
	➤ Minimum 35 m buffer zone is to be maintained from edge of Secondary Rajakaluves/nala	➤ Minimum 25 m buffer zone to be maintained from middle of Secondary Rajakaluves/nala	➤ As per report the measured distance from secondary drain to Block-1 building line is ranges between 51.20m to 54.8m, which is complying with Buffer zone. ➤ The distance from secondary drain to Block-2 building line is 59.40m which is also complying with buffer zone.

D. From Tertiary Drain/nala		
➤ Minimum 25 m buffer zone is to be maintained from edge of Tertiary Rajakaluves/nala	➤ Minimum 15 m buffer zone to be maintained from edge of Tertiary Rajakaluves/nala	➤ There is a storm water drain passing at sy. No. 61 of southern side of the project site as per village map. But, in the development plan approved by BDA and building plan approved by BBMP, the nala/storm water drain is shown outside the boundary of the project site. ➤ As per report measured the distance from tertiary drain to Block-1 building line is 26.40m , which is complying with buffer zone.

63. The Committee then has considered construction of box type SWD by PP and recorded observations as under:

“**BBMP has given approval** to the project proponent to **construct U-type RCC drain and 2 Nos. of RCC box** culverts without deviating the original alignment and measurement of the storm water drain. The RCC ‘U’ Type drain measurement is 5.40m×3.0m and two culverts of 12m R.C.C. Block type as per the approval. The land along the drain is 10.40m in which 5.4m width is for U type drain and remaining area is divided as 2.5m on either side of the Secondary Drain and reserved. The copy of the order and its translation, engineering drawings are given as Annexure 9. **The total length of drain from the Kasavanahalli Lake outlet to Kaikondarahalli Lake inlet is 525m. Out of 525m, the length of the drain passing in the said project is 130m i.e. from CH 395m to CH 525m.** The details drawing showing length of drain, width of construction of ‘U’ Type drain and remaining area of nala kharab reserved i.e. 2.5m on each side is shown as Annexure 10.

The **project proponent is constructing the box type storm water drain passing within the project site, as per the approval of BBMP.** (Photograph skipped)

The committee noticed that for the construction of U-type drain and RCC box culverts, the **existing drain was diverted temporarily** and the construction U-type drain is partially completed. The **excavated soils are stored adjacent.** The **construction is being carried out as per the approval.”**

64. Constructions of drive way, transformer yard etc. found in ‘buffer zones’ held permissible by Second Joint Committee in the report by referring to para 4.12.1 and 4.12.2 (i) and (ii) of RMP-2015 and says as under:

S. No.	Activity	Area	Permitted or not	RMP-2015
A. Lake Buffer				
1.	8 m Drive way	679.80 m ²	Permitted	As per Clauses 4.12.1 & 4.12.2 (i) (ii)
2.	Transformer Yard	140.00 m ²	Permitted	
3.	Parks & Open Space	5093.87 m ²	Permitted	
B. Secondary Nala Buffer				
1.	8 m Drive way	2366.00 m ²	Permitted	-do-
C. Tertiary Nala Buffer				
1.	8 m Drive way	1761.5 m ²	Permitted	-do-
2.	Extent of STP	236.05 m ²	Permitted	

65. Second Joint Committee has held that project does not fall under category of Eco-sensitive zone since there is no notification by MoEF&CC declaring area in dispute as Eco-sensitive zone. With regard to the area of construction, Committee has referred to EIA 2006 and its Schedule, para 8(a), as was in 2006. It has ignored subsequent amendments and substitution made. Referring to old provision of 2006, Committee has observed that EC has been issued mentioning built up area 128193.9 square meters, construction of 2 residential blocks having 2 basements+Ground Floor+20 Upper Blocks with 655 units. It has then referred to BBMP’s sanctioned Building Plan dated 28.05.2019, wherein construction plan consisted of 3 basement floors, 2 Ground Floors, 20 Upper Floors in each block and total number of units 265 in Block-1 and 360 in Block-2; net built up area as per BBMP sanctioned plan was 61418.72 square meters in Block-1 and 64244.34 square meters in Block-2 i.e. total 125663.06 square meters. On this basis, Second Joint Committee says that built up area is less than 150000 square meters and falls under category B. The relevant part of report reads as under:-

“The above table reveals that the net built up area is 1,25,663.06 m² and **number of units are reduced to 625** while comparing with EC dated 10.01.2018. Accordingly, the total built up area of the project is <150000 m² and falls under Category B. The Environmental Clearance approved by SEIAA is right as per the threshold limit.”

66. Further observations and conclusions of Second Joint Committee’s report, we shall discuss later while considering issues on merits.

67. Appeal was finally heard on 11.08.2020. Supreme Court found that report of Second Joint Committee was in favour of PP. It observed that Tribunal, since, did not have the benefit of report of Second Joint Committee in OA No. 602/2019 which was filed for the first time before Supreme Court, hence it was appropriate that the order of Tribunal be set aside and matter be reheard by Tribunal. The relevant extract of the judgment dated 11.08.2020 (reported in **2020 (9) SCC 454**) reads as under:

“11. Taking note of the urgency indicated by the learned Senior Counsel for the appellants we request the NGT to dispose of the appeal after reconsideration within a period of six weeks from the first date on which the parties appear before the NGT. For the said purpose the NGT shall on receipt of this order indicate a date for appearance which shall be voluntarily ascertained by the parties herein without expecting fresh notice to be issued by the NGT. The NGT shall also provide opportunity to all the parties to put forth any additional documents or objections if any to the report and thereafter consider the matter in accordance with law.

*12. In the result, the **appeal is allowed in part. The order dated 03.02.2020 is set aside** and the matter is **remitted to the NGT to restore Appeal No. 54/2018 and reconsider the same in the manner indicated above. No construction shall be put up in the meanwhile.** There shall be no order as to costs.*

13. Pending applications, if any, shall stand disposed of.”
(Emphasis added)

68. Thereafter, MA No. 49/2020 was filed in OA-2 with a prayer that OA-2 be restored and heard afresh along with Appeal No. 54/2018 in

view of Supreme Court judgment in **Wonder Projects Development Private Limited vs. UOI (supra)**. Both the matters were directed to be listed together and heard on 28.08.2020. After hearing the parties, order was reserved and delivered on 08.09.2020. Tribunal found it appropriate to rehear the matter and directed that OA 602/2019 and OA 281/2019 both be revived for fresh consideration. The relevant extract of order dated 08.09.2020, reads as under:-

*“On 3.2.2020, all the three matters, OA 281/2019, OA 602/2019 and Appeal No. 54/2018 were taken up for hearing together and were disposed of in the light of the said report. It is only after the Tribunal passed the order dated 3.2.2020 that second report in OA 602/2019 was submitted in the proceedings pending in Supreme Court. The **said report makes no reference to report dated 23.9.2019 in OA 281/2019 though representatives of CPCB and State PCB are included in both the reports.** While the report in OA 602/2019 is only with regard to this project and is in favour of the project proponent but the report in OA 281/2019 also covers this project (apart from other constructions) and was, therefore, relied upon while passing the order dated 3.2.2020. Since order in Appeal No. 54/2018 has been set aside and is common basis for orders in OA 281/2019, OA 602/2019 and Appeal No. 54/2018 in the said report, all the three matters will require consideration afresh as far as this project is concerned. **OA 602/2019 and OA 281/2019 will have to be revived for fresh consideration in respect of this project.** We order accordingly. M.A. 49/2020 is disposed of.”*

69. Consequently, on the same day, a separate order was recorded in OA-1, i.e., OA No. 281/2019, which reads as under:

“In view of order passed today separately in Appeal No. 54/2018, H. P. Ranjana v. Union of India & Ors., OA 281/2019 is revived for further orders and be listed for hearing on 15.01.2021.”

70. Further, Tribunal heard Appeal No. 54/2018 and OA No. 602/2019 also on merits in the context of the reports of First Joint Committee and Second Joint Committee.

71. The Counsel appearing for appellant/applicant-H.P. Ranjanna in Appeal No. 54/2018 and OA No. 602/2019, broadly demonstrated faults

in second report and his submissions were summarized by Tribunal in order dated 08.09.2020, as under:

“

- A. The project proponent has **concealed material information in statutory Form 1A** submitted to State Expert Appraisal Committee (SEAC) **in respect of particulars of the ecologically sensitive areas, including the water bodies and forests.** Having regard to extent of the constructions required to be taken into account in terms of judgment in Goel Ganga (supra), **the project has more than 1.5 lac sq. meters of construction** on account of which it will fall under category 'B-1' in view of Para 8 (b) of the EIA Notification dated 14.09.2006, and not B2 under para 8 (a), to be appraised differently.
- B. The **lake being a wetland** as mentioned in the Atlas published by the MoEF&CC, **the project may be hit by the Wetland Rules.** Under Rule 4 of the Wetlands Rules, 2017, construction within 50 meters from the mean high flood level observed in past 10 years from the date of commencement of the Rules is not allowed. **No demarcation of the mean high flood level has been done or referred to determine whether the present constructions are within 50 meters of such level.** The Committee while observing that Wetlands Rules, 2017 should be followed, has observed that the area is not falling under the wetland definition without noting the 'National Wetland Atlas' showing that the area may be hit by the Wetland Rules.
- C. The Committee has **wrongly assumed the drain to be secondary drain** even though in the application of the **project proponent itself it is mentioned as primary drain.**
- D. The Committee has observed that the project proponent is constructing box type storm water drain passing through the project site. The **storm water drain**, as per para 8.0 of the report, **originates from the lake and flows towards the lake between the two blocks.** To approach Block-I, it has to cross secondary drain. **The area of secondary drain is kharab land**, measuring 13 guntha. BBMP had granted approval to construct the new type RCC drain and two RCC culverts without deviating from the original alignment and measurement of the drain. Thus, even if BBMP has granted permission, **use of kharab land and construction of RCC box type drain through secondary drain is contrary to statutory regulations under the 1961 Act.**
- E. There is **conflict in the reports** dated 23.09.2019 in OA 281/2019 and second report in OA 602/2019. Both the reports cover this project. In both the reports CPCB and PCB are parties. In first report

BBMP and BDA are included. They are not in second report. MoEF&CC and SEIAA are also not in second report. Stand of BBMP before this Tribunal is against the second report.

*F. According to written submissions filed by BBMP on 27.08.2020 the **project proponent has violated statutory requirements in obtaining building plan without first obtaining ‘Consent to Establish’** under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974. There is **encroachment of water stream and primary rajkaluve connecting two lakes**, viz upstream lake (Kasavanahallilake) and downstream lake (Kaikondarahalli lake). The **conceptual plan shows that there is a primary drain crossing the project land** and there also are kharab lands (meant for common use). The **kharab land cannot be used by the project proponent in view of condition no. 42 of the EC and a board is required to be displayed to that effect**. The same is sought to be encroached for construction of internal drive way. **Internal drive way is within the buffer zone. Various activities of the project proponent are in the buffer zone.**”*

72. The stand of appellant/applicant- H.P. Rajanna was supported by BBMP. The stand of PP, however, was that there was a mistake in relying upon report dated 23.09.2019 submitted in OA-1, since, issue raised therein, was in respect of land comprising of different Survey numbers; Report dated 29.06.2020 submitted by Second Joint Committee in OA-2 before Supreme Court dealt with the issue relating to the land of PP in Appeal No. 54/2018 and OA-2 and it finds project in dispute fully compliant; Second Joint Committee consisted of officials whose credibility cannot be doubted; project has been rightly evaluated as B2 category based on construction size mentioned in application, Form 1, supported by conceptual plan giving details; PP will not construct more than that; project is neither in buffer zone of lake or the drains nor hit by Wetland Rules, 2017; Development Plan and Building Plan were duly sanctioned by BBMP; U-type RCC structure for storm water drain has been duly approved by BBMP; even if Committee wrongly took Primary drain as Secondary, the project is beyond buffer zone of Primary drain also;

sequence of obtaining consent to establish under Water Act, 1974 does not affect the substance being a procedural matter, not going to the root of legality of the project hence even if there is violation of any condition of EC, the same can be rectified and EC as such is not vitiated.

73. Tribunal examined above contentions and noticed that there was contradictions in reports of two Joint Committees, but, what that contraventions are, what effect it had on the project and whether second report can be accepted without going into the objections with regard to size of constructions, statutory regulations dealing with the buffer zones of lake/drains, Wetland Rules, 2017 and Form 1 not giving all relevant details and the same being accepted by SEAC, Karnataka without verification and whether procedure laid down in EIA dated 14.09.2006, was followed, needs detailed scrutiny. Tribunal also noticed that the scope of OA No. 281/2019 and OA No. 602/2019 is over-lapping; initially, Appeal No. 54/2018 was before Bench II and later filed OA No. 281/2019 in Bench I; subsequently, Appeal No. 54/2018 was transferred to Bench II, to be heard with O.A. No. 281/2019, vide order dated 08.07.2019; OA No. 602/2019 was filed subsequently on 17.07.2019 and taken up in Bench I on 19.07.2019; without reference to order dated 11.03.2019 in OA No. 281/2019, Tribunal sought a factual report with reference to issue of project being within buffer zone of lake/drains, following usual practice in such matters so as to ascertain the relevant facts, independently from concerned statutory authorities, in such matters; First Joint Committee in OA No. 281/2019 had already submitted an interim report on 11.04.2019 and final report was submitted on 23.09.2019, that is within a week when second joint Committee was constituted in OA No. 602/2019; Report dated 23.09.2019 submitted by First Joint Committee found project in dispute

in OA-1 as well as some other constructions to be in buffer zone of the lake; counter affidavit/response submitted by BBMP was in consonance with the said report; hence on 03.02.2020, when all the three matters came up before Tribunal; they were heard together and disposed of in the light of report dated 23.09.2019; thereafter, matter went to Supreme Court and as per direction of Supreme Court, Second Joint Committee submitted report directly thereat; this report of Second Joint Committee made no reference to report dated 23.09.2019 submitted in OA No. 281/2019 before Tribunal though two representatives, i.e., CPCB and KSPCB were common in both the Committees; be that as it may, since judgment/order dated 03.02.2020 in reference to Appeal No. 54/2018 was set aside by Supreme Court vide judgment dated 11.08.2020, all the matters need be heard again and consequently, OA-1 & OA-2, both were revived. Thereafter, Tribunal also considered both reports and found findings in Second Joint Committee that project in dispute is outside buffer zone, in conflict with the findings in report dated 23.09.2019 submitted by First Joint Committee in OA-1. Tribunal also considered the question of acceptability of Second Joint Committee's report and gave its reasons on this aspect in para 16 to 19. In brief, Tribunal held that Second Report has failed to consider First Report, and not explained facts stated in First Report. In respect of size of project, different figures were given by PP to different authorities but this aspect was not considered by Second Joint Committee though it was relevant for consideration of grant of EC in as much as if area would exceed 150000 square meters, project would fall in Category A and a different procedure would have to be followed. Tribunal relied on Supreme Court Judgment in ***Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401***, wherein it was held that EC can be granted strictly in accordance with the procedure

laid down in EIA 2006; Parameters and procedure for evaluation of different categories of projects are different; Category of project depends on size of construction; if it is more than 1.5 lac square meters, it would fall in Category A and EC granted treating the project as B2 will be invalid; Supreme Court also explained the process of EIA stating that it involves 4 stages namely, screening, scoping, public consultation and appraisal; EC process is based on information provided by applicant in Form 1 and this information is crucial; depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address those concerns in the subsequent study; missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under EIA 2006; and any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Tribunal further said that Second Joint Committee has said that there is no wetland relevant for project without having any demarcation in terms of Wetland Rules, 2017 though it was own disclosure by applicant that the site in dispute was abutting lake and Rajakaluves were also passing through the disputed site or in its vicinity.

74. SEIAA, Karnataka had taken a stand before Tribunal that it had gone by information in Form 1 without any physical visit to the site or independent evaluation. Tribunal said that it was necessary for it to verify the facts; two reports covered same project and two members were common in both the Committees, still reports were contradictory and those common members have also not made any endeavor to explain or give any reason, why contradictory reports have come; with regard to wetland, National Wetland Atlas was not considered; once an area is

wetland, compliance of statutory rules was necessary in the light of Supreme Court Judgment in ***M.K. Balakrishnan and Ors. v. Union of India and Ors., (2017) 7 SCC 805***; the extent of constructions needed to be evaluated in view of law laid down in ***Goel Ganga Developers India Pvt. Ltd. vs. Union of India and Ors., (2018) 18 SCC 257***; even if project was beyond buffer zone of drain, it has to be ensured that there are no other development activities in the said zone, including RCC storm water drain passing through the existing drain/kharab land, it had to be examined whether box type constructions/civil work in any manner affects the catchment area of drains; Second Joint Committee has taken BBMP's approval as conclusive without independent evaluation; though BBMP itself has taken a stand in the affidavit that its approvals are against law and SEIAA, Karnataka has not made any independent evaluation as required and Second Joint Committee has not examined this aspect also.

75. Consequently, Tribunal took a view that an independent report by another Joint Committee should be called for. Accordingly, it proceeded to form a new Committee (hereinafter referred to as 'Third Joint Committee') comprising of representatives of four authorities, represented in the Second Joint Committee, and five other authorities/institutions, i.e., total nine members. The relevant extract contained in paras 20, 21 and 22 of the judgment, read as under:

"20. In view of the above, we find it necessary to have an independent report by another joint Committee which we now constitute. The joint Committee will comprise apart from the representatives of the four authorities represented in the Committee which has given second report, five other authorities/institutions need to be involved. BBMP and BDA were party to report dated 23.9.2019, they need to be involved to reconcile the two reports. Nominee of Irrigation & Flood Control Department, Government of Karnataka and nominee of Revenue Department, Government of

Karnataka are required for demarcation of mean high flood level as per the Wetland Rules. Karnataka State Wetland Authority is to be added for relevant expertise. Thus, there will be nine (09) members in all. The nominee of the MoEF&CC will be the Coordinator/Chairman of the Committee who, in the circumstances, should be of the level of Joint Secretary or equivalent. The nominee of CPCB will be the Regional Director/Scientist E. The nominees of SEIAA, Karnataka, State Wetland Authority and State PCB will be the respective Member Secretaries. The nominee of Irrigation & Flood Control Department will be the Chief Engineer and nominee of Revenue Department, Govt. of Karnataka will be the Collector. Nominees of BBMP and BDA will be the respective CEOs. The Coordinator may call first meeting at the earliest.

*21. The Committee will be at liberty to involve any other expert/institution. It will be open to hold meetings by video conferencing, if so decided but **it may visit the site, look into the earlier reports and the above points, particularly size of the project, compliance of statutory rules relating to buffer zone/wetland and furnish its report within two months** of its first meeting by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

22. It will be open to the appellant and the project proponent to give their representations to the coordinator of the Committee mentioning brief points not beyond 10 pages, apart from documents relied upon within one week from today through the regional office of the MoEF&CC. The matter will be considered further after the receipt of the report of the joint Committee.

List for further consideration on 15.01.2021.

A copy of this order be sent to MoEF&CC, CPCB, SEIAA, Karnataka, State PCB, BBMP, BDA, Secretaries, Irrigation and Flood Control Department, and Revenue Department, Government of Karnataka and Karnataka State Wetland Authority by e-mail for compliance.”

(Emphasis added)

76. Third Joint Committee has given its report through Regional Officer, Integrated Regional Office (IRO), Bengaluru, vide letter dated 15.03.2021/16.03.2021, submitted to Tribunal on 18.03.2021.

77. Both the parties, i.e. Appellant/Applicant as well as PP, have submitted their objections/responses to the reports, advanced arguments, also filed written submissions.

78. We have heard Shri Raj Panjwani, Senior Advocate with Mr. Rahul Choudhary, Advocate (in Appeal No. 54/2018 & OA No. 602/2019) appearing for Appellant/Applicant, Mr. Ram Prasad, Advocate (In OA No. 281/2019) for Applicant-Mr. Pinaki Misra, Senior Advocate with Mr. V. D’Costa and Ms. Astha Ojha, Advocate for respondent-11 and 12, Mr. Darpan KM, Advocate for State of Karnataka and BBMP, Mr. Mukesh Kumar, Advocate for KSPCB and Mr. H.K. Vasanth, Advocate for SEIAA, Karnataka.

79. Learned Senior Counsel Shri Raj Panjwani, appearing for applicant/appellant, at the outset submitted that Third Joint Committee, as constituted by Tribunal has not submitted report through those members but, in fact, some of the members who actually made inspection, participated in the proceedings and signed reports are different persons comprising of very junior level officers and, therefore, report of Third Joint Committee is vitiated on this ground alone. He urged that it is not a report of Committee as constituted by Tribunal, hence should be rejected outright.

80. We find that pursuant to Tribunal’s order dated 08.09.2020, Regional Office, Bengaluru of MoEF&CC issued order dated 16.12.2020 constituting Joint Committee of the following members:

“

S. No.	Name	Designation	Nominee/Representative Department
1	Shri Kaushlesh Pratap Singh, IFS	Regional Officer	Chairman of the Joint Committee and Representative of MoEF&CC Integrated Regional

			Office (IRO), Bangalore
2	Dr. H.R. Mahadev, IAS	Commissioner	Representative of BDA
3	Shri. Vijaykumar Gogi, IFS	Principal Secretary to Government (Ecology and Environment), Forest, Ecology and Environment Department	Representative of SEIAA, Karnataka and Karnataka Wetland Authority
4	Shri. H.L. Prasanna	Engineer-in-Chief	Representative of Minor Irrigation and Ground Water Development Department
5	Shri. R Prasad	Additional Director of town Planning	Representative of BBMP
6	Shri. M.K. Prabhudev	Chief Environmental Officer	Representative of KSPCB
7	Shri. G. Thirumurthy	Additional Director/ Scientist-E	Representative of CPCB
8	Shri. David Doraswamy	Survey Supervisor	Representative of Department of Revenue (Land Records)
9	Dr. Murali Krishna	Joint Director/ Scientist-D	Co-Opted Member from IRO, MoEF&CC, Bangalore

81. However, report shows that Dr. H.R. Mahadev, Commissioner (Representative of BDA), Shri H.L. Prasana, Engineer-in-Chief (Representative of Minor, Irrigation and Ground Water Development Department), Shri H.N. Raghu, Additional Director (Representative of Town Planning, BBMP), Smt. Saumya D, Scientist-D, Regional Directorate, CPCB are not signatories and instead their representatives (Officers, junior in rank) have participated as members of Committee and signed report. This is demonstrated as under:

Name of the member as per NGT order dated 08.09.2020 and MoEF&CC order dated 16.12.2020		Signatories to the Report who were not Members of committee as per NGT order and MoEF&CC order dated 16.12.2020	
Name	Designation	Name	Designation
Dr. H.R. Mahadev	Commissioner (Representative of BDA)	Shri B.A. Shivananda	Superintending Engineer, BDA
Shri H.L. Prasana,	Engineer-in-Chief (Representative of Minor, Irrigation and Ground Water Development Department)	Shri Jagadish B.K.	Asst. Engineer, Minor Irrigation
Shri H.N. Raghu,	Additional Director (Representative of Town Planning, BBMP)	Shri B. Manjesh	Joint Director, Town Planning, BBMP
Smt. Saumya D,	Scientist-D, Regional Directorate, CPCB	Shri G. Thirumurthy	Additional Director/Scientist-E

82. The above discrepancy, evident from record cannot be appreciated. The officers who were appointed as Members of Committee had no authority to depute or delegate or nominate any other official and that too considerably Junior Officers. However, looking to the gravity of issue and the fact that these matter are pending for the last 2 to 3 years, have travelled Supreme Court thrice at interlocutory stage or final stage, we find it appropriate to examine on merits also and not to substantiate our judgment only on the above discrepancy. Therefore, we have heard on all the issues raised on merits and proceed to decide the same.

83. The entire controversy before us now revolves around the observations and recommendations made by Third Joint committee in its Report dated 15.03.2021/16.03.2021 relating to lake, drains, ‘buffer zone’, observance of Wetland Rules, 2017, built up area and compliance of EIA 2006. Therefore, it would be appropriate to notice contents of this report before discussing matter in the light of rival contentions.

84. Third report dated 15.03.2021/16.03.2021 shows that Committee held first meeting on 13.12.2020 and, thereafter, visited the site. It also informed various departments namely BBMP, Revenue Department, Wetland Authority, Minor Irrigation and Flood Control Department, BDA, SEIAA Karnataka and KSPCB, imposing some questions, which are as under:

“

S. No.	Department	Information/clarification sought
1	BBMP/Revenue Department	- What is the Buffer area from the lake to Block-I and Block-II? - What is the Buffer area from centre of the secondary nala to Block-I and Block-II? - Whether approval was accorded for construction of a box drain for flow of water in the secondary nala or for usage of Kharab land in the project site and whether the same is in consonance with the existing Rules/ Acts in force.
2	Wetland Authority/ BBMP / Minor Irrigation and Flood Control	Whether the Kaikondarahalli lake has been notified as Wetland or Not? What is the maximum buffer area to be left from the lake if the lake is notified as a Wetland area and what activities are permitted within buffer area as per Wetland Rules and also considering Justice Balakrishnan verdict? - What is the maximum water level of Kaikondarahalli lake/ height of the bund and what is the maximum water level observed during last 10 years along with direction of flow of water from lake as per Rule 4 (vi) of Wetland Rules 2017? - To confirm whether any construction temporary/ permanent nature undertaken in buffer area? Whether adequate buffer distance is maintained from lake periphery to Block-I and Block-II as per Rule 4 of Wetland Rules
3	BDA/BBMP	- Whether building permission accorded for construction of Block-I and Block-II or not? If permission is accorded, the details of the same. To confirm the size / total area of the project (Both FSI and Non-FSI) area of two towers cumulatively.
4	SEIAA	- Whether EC obtained and details of EC along with its validity. - Whether EIA studies were required or not during the appraisal of the project (B1/B2 category) based on EIA Notification 2006
5	KSPCB	Whether CFE obtained or not and if yes, details of CFE along with its validity.

”

85. It has examined the matter on six aspects, collectively i.e. (a) 'Buffer Zone' and distance from the lake periphery to constructed towers, (b) size of the project, (c) "Kaikondarahalli Lake" as wetland and mean high flood level, (d) Kharab land in the project site, (e) reconciliation of both reports of the Joint Committees constituted in OA-1 and OA-2 and (f) relevant statutory approvals i.e. EC, Consent for Establishment and other statutory approvals obtained by PP.

86. Third Joint Committee has recorded its conclusion and final remarks as under:

"CONCLUSION AND FINAL REMARKS"

As per directions of Hon'ble NGT, Principal Bench, New Delhi vide its order dated 08.09.2020 the Appeal No. 54 of 2018 sought an independent report by another Joint Committee with the following mandate:

- *Reconciliation of the two Joint Committee Reports (OA No. 281 of 2019 and OA No. 602/2019)*
- *To verify the size of the project (FSI and Non-FSI)*
- *To verify the compliance of Statutory Rules relating to 'Buffer Zone' Wetland.*

As per the directions of the Hon'ble NGT, this Joint Committee after reconciliation of both the earlier Joint Committee Reports submitted in OA No. 281 of 2019 and OA No. 602 of 2019 along with written submissions and official correspondence received from relevant Statutory Agencies have also been referred and accordingly conclude the following:

1. *M/s. Wonder Projects Development Pvt. Ltd have **not violated "Kaikondarahalli Lake" 'Buffer Zone' requirements** and have **left an adequate buffer area of more than 75.00 Mtrs from the lake periphery and more than 50.00 Mtrs from the Secondary Nala** in the project site to the partially constructed tower in Block-I which is the maximum threshold under any of the applicable Statutory requirements including various Judgements of Hon'ble Supreme Court and Hon'ble NGT and also as per Wetland requirements.*
2. *Project Proponent has **not undertaken any construction either of permanent or temporary nature in the lake 'Buffer Zone'** and this buffer area has been earmarked for greenbelt development.*

3. Project Proponent has **not violated any built-up area norms** and appraisal of the project under B2 Category was done correctly as the total built area of the project (including FSI and Non FSI area) was less than 1,50,000 Sq. Mtrs which do not require mandatory Environment Impact Assessment (EIA) Studies as per Environment Impact Assessment Notification, 2006.
4. Project Proponent has **maintained adequate Nala Buffer of more than 50.00 Mtrs to the partially constructed tower in Block-I** which is the maximum threshold **even if it is considered as Primary or Secondary Nala.**
5. **As per the provisional inventory submitted by State Government of Karnataka to Central Government, “Kaikondarahalli Lake” has been included in the provisional inventory list of Wetlands.** However, as on date this “Kaikondarahalli Lake” **has not been notified as a Wetland by the Government.** The Mean High Flood Level of this “Kaikondarahalli Lake” is 880.207 Mtrs. which is less than the top bund level (TBL) i.e., 881.407 Mtrs. Considering the last 10 years data, it has been noted that this lake has never overflowed and further the **direction of flow of water is towards Northern Side and this project located in South-Eastern side of the lake, the possibility of water overflowing into this project site is very remote.** Further, the **requirement of maintaining a buffer distance of 50.00 Mtrs. from the Mean High Flood Level is also complied as project proponent have left a buffer distance of 75.00 Mtrs. from the lake periphery.**
6. As per official records it is noted that **13 Guntas of the project site with a secondary nala flowing from “Kasavanahalli Lake” to “Kaikondarahalli Lake” is a Kharab Land** in which no development / constructions are to be undertaken. However, considering the importance free flow of water between the two lakes without disturbance and **as a special case permission for construction of RCC Box Drain and U type RCC Drain in Kharab land was accorded by Bruhat Bangalore Mahanagara Palike (BBMP)** under exercise of due powers conferred to the Commissioner, BBMP under Section 288A and 288(1)(c) of the Karnataka Municipal Corporation Act, 1976 **which the Joint Committee finds to be in order.**
7. Pursuant to reconciliation of both the Joint Committee Reports in OA No. 281 of 2019 and OA No. 602 of 2019, it is noted that out of total project area, nearly **about 58% (29264 Sq. Mtrs) of the area comes under either Lake Buffer area or Nala Buffer area and the project proponent cannot undertake any**

construction in that area and the area available for developmental activity is only about 42% (21118.93 Sq. Mtrs.) and **suitable consideration have already been made in the project design with regard to buffer area requirements.** Accordingly, this Joint Committee opines that construction activities in the above survey numbers can be permitted while strictly adhering to both Lake and Nala buffer area requirements and in case of any violation in future, appropriate enforcement action can be taken by relevant Statutory Agencies.

8. Project Proponent have obtained all requisite permissions from relevant Statutory Agencies and **Construction of the Project have been stopped from 03.02.2020** pursuant to Orders of the Hon'ble NGT in Appeal No. 54 of 2018 and OA No. 602 of 2019 and **on the day of Joint Committee** visit also the same was noted that **construction has been stopped.**"

Objection by Appellant/Appellant to Third Report:

87. Appellant/applicant-H.P. Ranjana has objected to this Report vide Objections dated 11.06.2021 emphasizing on the issue of illegal change of members of Third Joint Committee contrary of order of this Tribunal and also order of MoEF&CC constituting Committee. It has also pointed out many other discrepancies, in brief, are as under:

- (a) Consent to Establish granted by KSPCB was withdrawn vide order dated 06.07.2020 and the said order is still operative;
- (b) Entire project has been stayed by Karnataka Real Estate Appellate Tribunal vide order dated 11.02.2021 in Appeal No. (K-REAT) 355 of 2020;
- (c) Third Joint Committee has stated that EP has not violated 'Buffer Zone' norms and maintained a buffer of more than 75 meters from the lake periphery to Block-I and Block-II. However, it has failed to examine further whether there are development activities in the said zone or not. In the order dated 08.09.2020, Tribunal said "*Even if the project is beyond the 'Buffer Zone' of the drain, it has to be ensured that there is no other development activities in the said zone*". Third Joint

Committee has given findings about no construction coming within prohibited 'Buffer Zones of lake though constructions allowed in DP are:

- (i) Driveway's within 50 meters on either side of 'Buffer Zones of inter-connecting Primary Rajakuluves/nalla between the two lakes (upstream "Kasavanahalli Lake" and downstream "Kaikondarahalli Lake") wherein the said nalla bisects block-1 and block-2 and flows into the downstream "Kaikondarahalli Lake";
 - (ii) Creation of infrastructure for Common areas;
 - (iii) Construction of boundary wall alongside the lake;
 - (iv) Constructions/creation of storm water drains on the periphery of project, within lake's 'Buffer Zone', and next to the lake itself. (This can be discerned from conceptual plan submitted before SEIAA, Karnataka, annexure-2);
- (d) Third Joint Committee has not looked into DP wherein several activities were proposed within 50 meters of primary nalla/feeder canal as well as 75 meters buffer from the lake, plus creation of storm water drain right next to lake. It has failed to consider that construction of feeder canal itself is completely prohibited. Feeder canal connecting two lakes, flowing through the project site is a 'water stream' and cementing it is a clear case of impeding natural flow of water which tantamount to removal of Rajakaluves. It shows that Third Joint Committee has not examined the matter, independently, but simply on the basis of information given by different agencies and by twisting facts, has submitted report;

(e) It has also not examined correct built up area of the project. PP has disclosed built up area differently before different authorities. As per BBMP reply dated 05.09.2018, total construction area including FAR and non-FAR was 235076.81 square meters. Committee has also failed to examine conceptual plan submitted by PP before SEAC, wherein FAR and non-FAR area was worked out as under:

“Common Values of Project	
<i>Total FAR achieved</i>	<i>93423.70 Sq Mts</i>
<i>Parks and open spaces</i>	<i>4833.73</i>
<i>Civil amenities</i>	<i>2524.1.8</i>
Total	100781.61 Sq Mts
 <u>PHASE-2</u>	
<i>Parking</i>	<i>17605.05</i>
<i>FAR deductions</i>	<i>18,442.05</i>
<i>Lift and Ramps</i>	<i>837.0</i>
<i>Shafts</i>	<i>706.0</i>
Total	37,590.1 Sq Mts
 <u>PHASE-1</u>	
<i>Parking</i>	<i>13,835.20 Sq Mts</i>
<i>FAR deductions</i>	<i>14,688.20</i>
<i>Shafts</i>	<i>696.0</i>
<i>Lifts and Ramps</i>	<i>853.0</i>
Total	30,073.2 Sq Mts
 Grand Total:	
Common Values of Project +Phase-1 + Phase-2	
- 100781.61 Sq mts + 37590.1 sq mts + 30073.2 Sq Mts	
 Total	 1,68,444.91 Sq Mts”

(f) Construction of 280 KLD + 210 KLD STPs, deep recharge wells along lake ‘Buffer Zone’ boundary and all around boundary of project site on all sides was also liable to be included in the area of construction and it would have taken built up area of project, more than 150000 square meters, bringing it within different category and requiring different procedures for consideration of grant of EC which has not been followed in this case;

- (g) Committee has considered distance of periphery lake *viz-a-viz* residential tower and has excluded/omitted to consider other ancillary activities within 'Buffer Zone' of drains and lakes i.e. drive way, park and open space, sought to be developed by PP as civic amenities for the occupants;
- (h) Committee has referred to the ultimate permission granted by Commissioner, BBMP purported to exercise powers under Section 288 (1) (c) of KMC Act, 1976 for allowing Box drain RCC construction of Primary Rajakaluves processing through the project land, ignoring that reliance on the said provision was completely misplaced;
- (i) Construction of RCC drains and RCC blocks on *Kharab* land has been justified on the basis of BBMP letter dated 02.08.2017 without examining that no construction could have been made on *Kharab* land. It was wholly impermissible. Committee has justified it on the basis of BBMP's letter dated 09.03.2021 informing that Commissioner, BBMP, in exercise of powers under Section 288A and 288(1)(C) of KMC Act, 1976, granted permission, without examining whether any such power claimed, actually possessed by such Authority or not;
- (j) It has failed to consider following constructions within 'Buffer Zone' of water body sought to be undertaken by PP:
- i) In the 'Buffer Zone' of "Kaikondarahalli Lake": creation of **a ramp and driveway**.
 - ii) In 'Buffer Zone' of Primary Rajakaluve; construction of **12m drive way**;
 - iii) In the 'Buffer Zone' of Secondary Rajakaluve passing through Survey No. 57; construction of 12 meters wide drive way, installation of **gas bank** and infrastructure for **LPG pipe line**;

- iv) In the ‘Buffer Zone’ of Secondary Rajakaluve passing through Survey no. 61/1; construction of 8 meter wide Fire Driveway, installation of an **Organic Waste Converter** and **gas bank**/infrastructure for **LPG pipe gas line**;
- v) Compacting and **concretization** throughout Buffer Zones.

(k) Annexure-9 to Report of Third Joint Committee, states that Mean High Flood Level must be calculated and demarcated. Letter dated 25.02.2021, however, said that it was not measured, therefore, Wetland Rules, 2017 have been violated;

Additional Objections:

88. Additional objections dated 18.06.2021 have also been filed by appellant/applicant, thereby it has simply annexed copies of Wetland Rules, 2010, guidelines for implementing Wetland Rules, 2017, Tribunal’s judgment dated 06.12.2018 in OA No. 125/2017, table mentioned and Conceptual Plan submitted by PP to SEIAA, Karnataka. From the said table, it is evident that PP has proposed 265 units in Block-1 and 390 units in Block-2, i.e., total 665 units. Summary of table shows that from gross built up area, PP has deducted area for shafts/cut-outs, lifts and ramps, parking and OTS terraces as Net FAR deductions and after deducting the same has given built up area for two blocks, as under:

Block-1:	43816.70 square meters
Block-2:	50357.00 square meters
Total:	94173.70 square meters

89. The required parking as per Conceptual Plan is for 460. It also shows 1335.92 square meters kharab Land on the land on project site.

Arguments of the respondents' counsel:

90. The learned Counsel for BBMP has stated that he stick by the affidavit and contents thereof filed on behalf of BBMP. Learned Counsel for other authorities have only attempted to defend various officials. Though, learned Counsel for SEIAA, Karnataka has not disputed that members who actually participated in the proceedings of Third Committee are not those, as constituted by Tribunal and appointed by MoEF&CC, but there is no *malafide* on the part of authorities and on account of work pressure, or may be for *bonafide* mistake, some senior officers who were members of Committee authorized other officers to participate in Third Committee proceedings and submit report. He said that it is mere an irregularity and would not vitiate report itself.

91. On behalf of PP, matter has been seriously contested. Learned Senior Counsel, Mr. Pinaki Misra, stated that holding company of PP is very prestigious and never tried to go for real estate development in any fishy or dubious manner. In this case, land constituting the proposed project was purchased/acquired in a lawful manner from its erstwhile owners, the land use was changed by Competent Authority in accordance with law and there is no illegality; PP prepared plan and applied to various authorities for NOC/Consent/Permissions and same have been granted by different authorities from time to time, after due application of mind, objective consideration and without any irregularity/illegality therein. He urged that PP has no intention of committing breach of any law including environmental laws; it has given a clear understanding to all the authorities that it will abide by the built up area of 125663.06 square meters for which Building Plan has been approved and SEIAA, Karnataka has granted EC and Consent by KSPCB. He further argued that some changes and different proposals submitted to different

authorities were only on account of modification of designs by Project Engineers and Designers but that difference should not be construed as a concealment or disclosure of wrong information or varying stand taken by PP before different authorities so as to constitute any illegality on its part. Shri Misra, while admitting that land of disputed project on Northern side abuts 'Kaikondarahalli Lake' and some part passing through the land is Kharab whereon there is a Rajakaluve/nalla which some authorities have treated as 'Primary Rajakaluves' and some including Third Joint Committee as 'Secondary Rajakaluves/nalla'. Be that as it may, Shri Misra stated that from the point of construction of two residential blocks, PP has maintained requisite 'Buffer Zone', and neither there is attempt nor any intention nor as a matter of fact any action on the part of PP to alter change/obstruct/affect otherwise, either the aforesaid Rajakaluves/nalla or the lake or its surroundings including 'Buffer Zone'. On instruction, Shri Misra, learned Senior Counsel gave an undertaking, with reference to reply dated 30.06.2021 filed in reply to the submissions of applicants, pursuant to permission granted by Tribunal when judgment was reserved, that PP though started constructing RRC drain but has stopped further construction on 03.02.2020 and the said construction is incomplete; PP would remove aforesaid incomplete concrete U shaped Box drain and substitute it, by installing either a Gabion Wall, Bio Swale or such other suitable measures which will help in free flow of water and in interest of ecology as permitted by Tribunal. He further stated that PP is ready to remove entire partly constructed U shaped Box drain and restore nalla/drain to its original condition in deep consultation with best Ecologist. No water from project would be discharged in the lake at any point of time; the project is a Zero Discharge Zone with no sewage flowing into the lake; PP has proposed to

use STP sludge as manure, during operation phase; it has undertaken to meet water requirement of nearly 310 KLD (Block-1) and 280 KLD (Block-2) obtained from treated water from STP; it would treat domestic sewage in STP and maintain STP to ensure aerobic conditions; and PP has neither concealed any information nor given any wrong information in Form-1/1A.

92. In the light of rival submissions and after perusal of reports, pleadings and other documents placed on record, we find that broadly issues raised in these two matters are with regard to wetland, its surrounding area, i.e., zone of influence, which needs to be protected, development of residential project in the vicinity of the said wetland, particularly, when Storm Water Drain is also passing through the land of disputed project flowing natural water from one lake to another, the manner in which various Statutory Authorities have examined, information given by PP for getting clearance mainly EC and also whether there is any violation of Environmental laws by PP.

93. Firstly, the concept of wetland, importance of its protection and statutory provisions if any operating, need to be examined. The next aspect would be relevant Statute relating to grant of EC, and the manner it was granted to PP.

Wetlands:

94. The wetlands have been considered to be one of the most protective Eco-System on the earth as it provide many services to human society. Wetlands are part of landscape that are defined by the presence of water. Wetlands are area where presence of water determines or influences most, if not all of any area's bio-geochemistry i.e. the biological, physio and chemical characteristics of the wetlands. Wetlands are actually

biologically diverse and productive ecosystems, home to a variety of plant life, including floating pond lilies, cattails, cypress, tamarack, and blue spruce. In other words, wetlands support diverse communities of invertebrates, which in turn support a wide variety of birds and other vertebrates. Many ecologically and economically important species call wetlands, home for at least part of their lives. Wetlands are also critical habitat for migratory birds and waterfowl, including ducks, egrets, and geese. It is said that only 6% of Earth's surface is covered by wetlands, but provide a disproportionately high number of ecosystem services, in addition to maintaining biodiversity. In a study conducted by Cherry J. A. in 2011, published under heading of "Ecology of Wetland Ecosystems: Water, Substrate, and Life", it was observed, "to be classified as a wetland, presence of water must contribute to the formation of hydric soils, which are formed under flooded or saturated conditions persisting long enough for the development of anaerobic conditions during the growing season; water conditions in wetlands can vary tremendously with respect to the timing and duration of surface water inundation as well as seasonal patterns of inundation".

95. Importance of wetlands was recognized internationally when "Convention on Wetlands of International Importance" was held in 1971, commonly known as "Ramsar Convention" since it was held at a small Iranian town of Ramsar. In "Ramsar Convention", a wide variety of natural and human made habitat types, ranging from rivers to coral reefs were classified as wetlands. India was signatory to the said Convention.

96. Recognizing importance of wetlands and being signatory to Ramsar Convention, in National Environment Policy, 2006, ecological services provided by wetlands were recognized and it was emphasized that a

regulatory mechanism consistent with Ramsar Convention should be set up to maintain ecological character of identified wetlands and develop national inventory of such wetlands. It was given a statutory shape in 2010 when Wetlands (Conservation and Management) Rules, 2010 (hereinafter referred to as 'Wetland Rules, 2010') were made by Government of India in exercise of powers under Section 25 read with Section 3 (1)(2)(v) and sub-section 3 of EP Act, 1986. The said Rules were published in Government of India's Gazette Extraordinary, dated 04.12.2010. The term 'Wetland' was defined in Rule 2(g) as under:

*““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 the 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. No. 114(E), dated the 19th February, 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) of dated the 20th February, 1991;”*

97. Wetlands, protected and regulated by Wetland Rules, 2010, were described in Rule 3, as under:

“3. Protected wetlands.-Based on the significance of the functions performed by the wetlands for overall well being of the people and for determining the extent and level of regulation, the following wetlands shall be regulated under these rules, namely-

- (i) wetlands categorised as Ramsar Wetlands of International Importance under the Ramsar Convention as specified in the Schedule;*
- (ii) wetlands in areas that are ecologically sensitive and important, such as, national parks, marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals, coral reefs, areas of outstanding natural beauty or historical or heritage areas and the areas rich in genetic diversity;*

- (iii) *wetlands recognised as or lying within a UNESCO World Heritage Site;*
- (iv) *high altitude wetlands or high altitude wetland complexes at or above an elevation of two thousand five hundred metres with an area equal to or greater than five hectares;*
- (v) *wetlands or wetland complexes below an elevation of two thousand five hundred metres with an area equal to or greater than five hundred hectares;*
- (vi) **any other wetland as so identified by the Authority and thereafter notified by the Central Government under the provisions of the Act for the purposes of these rules.**

98. Wetland Rules, 2010 contemplated constitution of an Authority, namely “Central Wetlands Regulatory Authority”, defined in Rule 2(e), to be constituted under Rule 5. It contemplated constitution of Central Wetlands Regulatory Authority. Restrictions and activities within wetlands were provided in Rule 4. Sub-rule 1 of Rule 4 provided the activities which are completely prohibited within the wetlands. Sub-rule 2 of Rule 4 detailed activities which could be undertaken without prior approval of State Governments within the wetlands. Sub-rule 3 of Rule 4 conferred power upon Central Government to permit any of the prohibited activities or non-wetland use in the protected wetland on the recommendation of the Authority.

99. Rule 7 provided about other wetlands governed by different Statutes as to how the same shall be regulated. It read as under:

“7. Overlapping provisions.”-(1) *The wetlands within the protected areas of the National Parks and Wildlife Sanctuaries shall be regulated by the provisions of Wildlife (Protection) Act, 1972 (35 of 1972).*
(2) *The wetlands within the protected or notified forest areas shall be regulated by the provisions of the Indian Forest Act, 1927 (16 of 1927); the Forest (Conservation) Act, 1980 (69 of 1980); and the Environment (Protection) Act, 1986 (29 of 1986).*
(3) *The gaps in the regulation of wetlands within the protected and notified forest areas, if any, under the provisions of the Indian Forest Act, 1927; Wildlife (Protection) Act, 1972; and Forest (Conservation)*

Act, 1980; shall be plugged by invoking provisions of the Environment (Protection) Act, 1986.

(4) The wetlands situated outside the protected or notified forest areas referred to in sub-rule (2) shall be regulated by the relevant provisions of the Environment (Protection) Act, 1986 (29 of 1986)."

100. In supersession of Wetland Rules, 2010, another set of Rules have been framed i.e. Wetlands (Conservation and Management) Rules, i.e., Wetland Rules, 2017, published in Government of India's Gazette Extraordinary, dated 26.09.2017. The reasons for framing aforesaid Rules are broadly same as were contained in Wetlands Rules, 2010. It says that Wetlands, vital parts of the hydrological cycle are highly productive Eco-systems which support rich bio-diversity and provide a wide range of Eco-system services such as water storage, water purification, flood mitigation, erosion control, aquifer recharge, micro-climate regulation, aesthetic enhancement of landscapes while simultaneously supporting many significant recreational, social and cultural activities, being part of India's rich cultural heritage. And wetlands are threatened by reclamation and degradation through drainage and landfill, pollution (discharge of domestic and industrial effluents, disposal of solid waste), hydrological alteration (water withdrawal and changes in inflow and outflow), over-exploitation of natural resources resulting in loss of bio-diversity and disruption in eco-system services provided by wetlands. Referring to Article 51 A (g) of the Constitution, Notification states that it is stipulated in the aforesaid constitutional provision that it shall be the duty of every citizen of India to protect and improve natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. It also refers to India as a signatory to Ramsar Convention on Wetlands and committed to conservation and wise use of all wetlands within its

territory. Giving reason for framing of new set of Rules after promulgation of Wetlands Rules, 2010, Notification of 2017 said:

“And whereas conservation and wise use of wetlands can provide substantial direct and indirect economic benefits to state and national economy, and thereby the **Central Government stands committed to mainstreaming full range of wetland biodiversity and ecosystem services in development planning** and decision making for various sectors;

And whereas the State Governments and Union Territory Administrations need to take into account **wetland ecosystem services and biodiversity values likewise within their developmental programming and economic well-being**, also taking into cognizance that land and water, two major ecological constituents of wetland ecosystems, are enlisted as State subjects as per the Constitution;

And whereas the Central Government considered it necessary to supersede the Wetlands (Conservation and Management) Rules, 2010 for effective conservation and management of wetlands in the country;

And whereas the Central Government had, in exercise of the powers conferred by section 25, read with sub-section (1) and clause (v) of sub-section (2) and sub-section (3) of section 3 of the Environment (Protection) Act, 1986, published the draft Wetlands (Conservation and Management) Rules, 2016, vide number G.S.R. 385 (E) dated 31st March, 2016 for information of the public likely to be affected thereby; and notice was given that the said draft rules would be taken into consideration by the Central Government after expiry of a period of sixty days from the date on which copies of the Gazette notification is made available to the public;

And whereas the Central Government has received the suggestions and objections from the State Governments, Union Territories and its organizations, individuals and civil society organizations on the draft Wetlands (Conservation and Management) Rules, 2016;

And whereas the suggestions and objections received in response to the above mentioned draft rules have been duly considered by the Central Government in consultation with State Governments and Union Territory Administrations.”

101. Rule 2 defines certain terms used in Wetlands Rules, 2017. The relevant terms “authority”, “ecological character”, “integrated management plan”, “wetlands complexes”, “wise use of wetlands” and “zone of influence” are defined under:

“2. Definitions-

- (1) In these rules, unless the context otherwise requires,-
 - (a) “Act” means the Environment (Protection) Act, 1986;

- (b) “Authority” means the **State Wetlands Authority** or **Union Territory Wetlands Authority**, as the case may be;
 - (c) “Committee” means the **National Wetlands Committee** referred to in rule 6;
 - (d) “ecological character” means the **sum of ecosystem components, processes and services that characterise the wetlands**;
 - (e) “integrated management plan” means a document which describes strategies and actions for **achieving wise use of the wetland** and the plan shall include objectives of site management; management actions required to achieve the objectives; **factors that affect, or may affect, the various site features**; monitoring requirements for detecting changes in ecological character and for measuring the effectiveness of management; and resources for management implementation;
 - (f) “Ramsar Convention” means the Convention on Wetlands signed at Ramsar, Iran in 1971;
 - (g) “wetland” means an area of marsh, fen, peat land or water; whether 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, but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes;
 - (h) “wetlands complexes” means **two or more ecologically and hydrologically contiguous wetlands** and **may include their connecting channels/ducts**;
 - (i) “wise use of wetlands” means **maintenance of their ecological character**, achieved through implementation of ecosystem approach within the context of sustainable development;
 - (j) “**zone of influence**” means that **part of the catchment area of the wetland or wetland complex, developmental activities in which induce adverse changes in ecosystem structure**, and ecosystem services.
- (2) The words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings assigned to them in the Act.”

(Emphasis added)

102. Applicability of rules is provided in Rule 3 of Wetland Rules, 2017 as under:

“3. Applicability of rules.-These rules shall apply to the following wetlands or wetlands complexes, namely:-

- (a) **wetlands categorised** as ‘wetlands of international importance’ under the Ramsar Convention;

- (b) **wetlands as notified** by the Central Government, State Government and Union Territory Administration:

Provided that these rules shall not apply to the wetlands falling in areas covered under the Indian Forest Act, 1927, the Wild Life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the State Forest Acts, and the Coastal Regulation Zone Notification, 2011 as amended from time to time.”

103. Restrictions of activities are provided in Rule 4 and it is to some extent different from the earlier Rule 4 of Wetland Rules, 2010. New Rule 4 of Wetlands Rules, 2017 reads as under:

“Restrictions of activities in wetlands—(1) The wetlands shall be conserved and managed in accordance with the principle of ‘wise use’ as determined by the Wetlands Authority.

(2) The following **activities shall be prohibited within the wetlands**, namely,-

- (i) **conversion for non-wetland uses including encroachment of any kind;**
- (ii) setting up of any industry and expansion of existing industries;
- (iii) manufacture or handling or storage or **disposal of construction and demolition waste covered** under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;
- (iv) **solid waste dumping;**
- (v) **discharge of untreated wastes** and effluents from industries, cities, towns, villages and **other human settlements;**
- (vi) **any construction of a permanent nature** except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,
- (vii) poaching.

Provided that the Central Government may consider proposals from the State Government or Union Territory

Administration for omitting any of the activities on the recommendation of the Authority.”

(Emphasis added)

104. Wetlands Rules, 2017 contemplate “Wetland Authorities” in every State to be constituted by Central Government as “State Wetlands Authority” and composition thereof is given in Rule 5 sub-rule (i). Sub-rule (ii) of Rule 5 contemplates “Union Territory Wetland Authority” for each Union Territory which is also to be constituted by Central Government and its composition is given therein. Rule 5 sub-rule (4) details the powers and functions to be performed by State/Union Territory Wetlands Authorities. Rule 6 (1) talks of a “National Wetland Committee” to be constituted by Central Government and composition thereof is given therein. Rule 6 sub-rule 3 thereof details the functions of National Wetland Committee. Rule 7 makes it obligatory to the concerned department of State Government/Union Territory Administration to prepare a ‘brief document’ for each of the wetland identified for notification within one year from the date of publication of Wetland Rules, 2017, giving details as provided in sub-rule (i) it reads as under:

“7. Delegation of powers and functions to the State Governments and Union Territory Administrations.—

(1) The concerned Department of the State Government or Union Territory Administration **shall, within a period of one year** from the date of publication of these rules, **prepare a Brief Document for each of the wetland identified for notification**, providing:—

- a) demarcation of wetland boundary supported by accurate digital maps with coordinates and validated by ground truthing;
- b) demarcation of its zone of influence and land use and land cover thereof indicated in a digital map;**
- c) ecological character description;
- d) account of pre-existing rights and privileges;
- e) list of site-specific **activities to be permitted within the wetland and its zone of influence;**
- f) list of site specific **activities to be regulated within the wetland and its zone of influence;** and
- g) modalities for enforcement of regulation;”

(Emphasis added)

105. Based on the aforesaid 'brief document', concerned authority is required to make recommendation to State Government or Union Territory Administration, as the case may be, for notifying 'wetlands', vide sub-rule (2) of Rule 7. Thereafter, State Government or Union Territory Administration, as the case may be, after considering objections, if any, from concerned and affected persons, notify 'wetlands' in the official gazette within a period, not exceeding 240 days from the date of recommendation by the Authority.

106. Therefore, for identification of 'wetland' and notification a specific time schedule is provided in Wetland Rules, 2017. The identification has to be made within one year of publication of Rules. Since, Rules were published in Gazette dated 26.09.2017, process of identification had to be completed by 26.09.2018. The recommendation is to be made after giving opportunity of objections. The notification has to be issued in 240 days and not beyond that. These 240 days would commence from the date of recommendation.

107. In respect of 'wetlands' of transboundary, i.e., more than one State, Central Government will coordinate for preparation of 'brief document' and based on the 'brief document', National Wetland Committee is required to make recommendation to Central Government who shall notify "identified wetland" within a period not exceeding 240 days after considering objections, if any, from concerned and affected persons.

108. Though Wetlands Rules were framed in 2010 and substituted by new set of rules in 2017, still neither Authority as contemplated under Rules 2010 was constituted nor wetlands were identified and notified, following procedure prescribed therein.

109. This issue came up before Supreme Court in ***M.K. Balakrishnan vs. Union of India, Writ Petition No. 230 of 2001***. Here a writ petition under Article 32 of Constitution of India was filed in 2001 seeking for appropriate directions for conservation of wetlands. Supreme Court vide order dated 26.03.2009 (**reported in (2009) 5 SSC 507**) observed that wetlands would include ponds, tanks, canals, creeks, water channels, reservoirs, rivers, streams and lakes. Court suo-moto expanded scope of writ petition. It further said that there is acute shortage of water in India and one of the main reasons therefor, is that stock water conservation bodies like ponds, tanks etc. have been filled up by some greedy persons by constructing building, shops etc. Court said that the rivers in India are drying up, ground water is repeatedly depleted and canals are polluted. Court issued notice to Secretary, Ministry of Science and Technology, Union of India inquiring as to what measures have been taken to solve water shortage in the country and for implementing recommendation made by Court in ***State of Orissa v. Govt. of India, 2009 (5) SSC 492***.

110. Another order was passed by Supreme Court on **10.09.2014 in *M.K. Balakrishnan & Ors. v. Union of India (supra)***, observing that under Wetland Rules, 2010 Central Government was conferred powers to constitute Central Wetlands Regulatory Authority but there was nothing on record to show whether such authority was functional. Court was informed that National Wetlands Inventory and Assessment Project sponsored by MoEF&CC, Government of India, through Space Applications Centre, ISRO, Ahmedabad has undertaken task of making an inventory of all wetlands in the country in 2010 and inventory of such wetlands was figured. Court thus directed Government of India to inform whether Authority contemplated under Rule 5 of Wetland Rules, 2010

was functional and if so, its composition and whether any exercise for identification and classification of wetlands would be necessary after preparation of inventory of wetlands with the help of Space Applications Centre, ISRO, Ahmedabad.

111. An Interlocutory Application was filed being IA No. 16/2014, praying that States and Government of India should be restrained from giving any permission for construction and infrastructure purposes in and around known “wetland areas”. On this application also Supreme Court issued notices to Governments.

112. When the matter came up on 01.12.2016 (**reported in (2017) 7 SCC 809**), further time was prayed by the respondents Counsel, which was allowed. Next order is dated 17.01.2017 (**reported in (2017) 7 SCC 809**), when a reference was made to certain orders passed by this Tribunal. Counsel for petitioner sought time to examine those judgments and also whether matter be allowed to be considered by Tribunal with other pending matters. On 31.01.2017 (**reported in (2017) 7 SCC 810**), when matter came up before Supreme Court, Government of India informed that draft Wetlands Rules, 2016 have been prepared. Court enquired whether Rules have been circulated and finalized or not and also whether Central Wetlands Regulatory Authority, whose term was likely to expire on 14.12.2017 has been reconstituted or not. Government of India was also required to tell what specific steps were taken to preserve 26 wetlands covered by Ramsar Convention. Next order is dated 08.02.2017 (**reported on (2017) 7 SCC 810**), when Court was informed that Draft Rules were published inviting objections and in response thereto 175 comments were received. MoEF&CC also informed that term of Committee needs to be extended. However, Court issued direction that

Wetland Rules, 2016 shall be notified on or before 30.06.2017. With regard to preservation of 26 wetlands covered by Ramsar Convention, 1971, Court found that only some amount was disbursed by Union of India from time to time but what specific steps were taken for using the aforesaid funds, was not disclosed. Considering “National Wetland Inventory and Assessment”, which was filed by Union of India alongwith its additional affidavit, Court found that the information brochure on page 11 thereof shows that 2,01,503 wetlands have been mapped. All these wetlands have an area of more than 2.25 ha. Court observed that as a first step “brief document” with regard to these 2,01,503 wetlands should be obtained by Union of India from respective State Governments and to take follow-up action. Further, considering the fact that with the passage of time there is possibility that some wetlands may disappear, Court said in para 23, as under:

*“Accordingly, **we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India.** The Union of India will identify and inventorize all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, that is to say:*

- (i) reclamation of wetlands;*
- (ii) setting up of new industries and expansion of existing industries;*
- (iii) manufacture or handling or storage or disposal of hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified vide S.O. No. 966(E), dated the 27th November, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/Genetically engineered organisms or cells notified vide GSR No. 1037(E), dated the 5th December, 1989 or the Hazardous Wastes (Management, Handling and Transboundry Movement) Rules, 2008 notified vide S.O. No. 2265(E), dated the 24th September, 2008;*
- (iv) **solid waste dumping:** provided that the existing practices, if any, existed before the commencement of these*

- rules shall be phased out within a period not exceeding six months from the date of commencement of these rules;*
- (v) *discharge of untreated wastes and effluents from industries, cities or towns and other human settlements: provided that the practices, if any, existed before the commencement of these rules shall be phased out within a period not exceeding one year from the date of commencement of these rules;*
 - (vi) ***any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules;***
 - (vii) *any other activity likely to have an adverse **impact on the ecosystem of the wetland** to be specified in writing by the Authority constituted in accordance with these rules."*

113. ***M.K. Balakrishnan v. Union of India (supra)*** again came up before the Bench on 04.10.2017. Court's order shows that Government of India informed that Wetlands Rules, 2017 have been notified in 26.09.2017. Further, State Wetland Authority and National Wetland Committee under Rules 5 and 6 of Wetland Rules, 2017 have been constituted with regard to identification of wetland and Notification, Court said:

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

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

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

(Emphasis applied)

114. It is not disputed before us that “Kaikondarahalli Lake” and “Kasavanahalli Lake”; both the lakes are identified as wetland and mentioned in “National Wetland Inventory and Assessment” document, in respect of State of Karnataka, therefore, directions of Supreme Court as quoted above in ***M.K. Balakrishnan v. Union of India (supra)*** applying Rule 4 to said lakes, are applicable.

115. At provincial level, we find some attempt to protect ‘wetlands’ in the provisions made by Local Bodies. Though the term ‘wetland’ as such, has not been used in the RMP-2015 Bangalore, but for protecting water bodies, provision was made therein. RMP-2015 envisaged a compact, balanced and equitable, urban growth for Bangalore City. Zonal Regulations are integral part of RMP-2015. FAR ratio has been provided in Chapter 3.0 and states that FAR or Floor Area Ratio includes escalators, open balconies, staircase and corridors. However, it shall exclude or exempt parking space, main stair case room, lift shaft, lift wells and lift machines rooms, ramps, ventilation ducts, sanitary ducts and overhead tanks. Para 3.12 provides that all clearances shall be obtained from different authorities and reads as under:-

“3.12) No Objection Certificates:

- i. **For all Development Plans**, Apartment buildings and Residential layouts which come under the category stipulated by the KSPCB, **necessary NOC from KSPCB (KSPCB shall mention the need for environment clearance if any in the NOC) shall be furnished.**
- ii. For all buildings with **a height of 24.0m and above, NOC from Fire Force in** addition to NOC from Pollution Control Board (KSPCB shall mention the need for environment clearance if any in the NOC) **shall be furnished.**
- iii. For Cinema theatres, the setbacks and other provisions shall be as per Karnataka Cinematography Act and Rules.
- iv. NOC from Airport Authority of India shall be furnished where ever applicable.”

116. Regulations for main land use are in Chapter 4 and relevant paras 4.12.1 and 4.12.2(ii) read as under:-

“4.12.1) Description

The natural and manmade features meant for environmental conservation and preservation, including **water bodies**, forests and **drains**; parks, playgrounds, burial grounds and crematoria.

ii) Valley/drain

Within the demarcated buffer for the valley the following uses are allowed:

- i. Sewerage Treatment Plants and Water treatment plants.
- ii. Roads, pathways, formation of drains, culverts, bridges, etc. which **will not obstruct the water course, run offs, channels.**
- iii. 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.**
- iv. **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.
- v. **Any land falling within the valley for which permission has been accorded** either by the Authority or Government, and then such permission shall be **valid irrespective of the land use classification in the RMP 2015. Fresh permissions for developments shall not be accorded in valley zone.**

NOTE:

Drains: The drains have been 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.** These classifications have been used for the drains newly identified while finalizing the RMP 2015. In case the buffer has not been marked due to cartographical error for any of the above types of drains, then based on the revenue records buffer shall be insisted in all such cases without referring the land use plan while according approval for building/development/layout plan. Permissions in sensitive areas earmarked on the land use plan shall be considered only by the planning Authority.”

117. RMP-2015 was issued in 2007 and, therefore, did not have the benefit of statutory provisions relating to 'wetlands'. The wetlands provisions took shape of statute under EP Act, 1986 when Wetland Rules, 2010 were issued. The definition of 'wetland' in Rule 2(g) clearly talks of relevant area including zone of direct influence on wetlands that is to say the drainage area or catchment region of wetlands etc. as determined by authority. The "zone of influence" was not defined in Wetland Rules, 2010 but has been defined in Wetland Rules, 2017 under Rule 2(j). We do not find that these terms have been considered in any other matter but in the context of water bodies, beside the area which is directly covered by water bodies, which are normally known as Core Zone, the concept of 'Buffer Zone' surrounding the core zone of water bodies has been considered in many matters and in our view, zone of influence is a wider term and would include this 'buffer zone'.

118. It cannot be doubted that in the matter of water bodies, besides the area of 'core zone', any activity immediately thereafter, if allowed, would have adverse impact and cause damage to 'wetland' and its surrounding for the reason that development of flora and fauna etc. is not confined only to 'core zone' but spread in surrounding area also. The surrounding area to which the flora and fauna connected with concerned wetland is spread, would be within the term of 'zone of influence'.

119. Development in the manner so that environment may also be enjoyed by the people at large is necessary for the ultimate development of the area and the country as a whole but no development can be allowed which may have impact otherwise on natural resources and its surrounding areas causing degradation, depletion, extinction or damage

to flora and fauna which constitute a major portion of eco-system and ordinarily present with every wetland.

120. In ***Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647**, Court said that traditional notion of conflict and development is no longer acceptable and 'sustainable development' is the answer.

121. In ***Indian Council for Enviro-Legal Action v. Union of India*, (1996) 5 SCC 281**, describing principle of 'sustainable development', Court said that economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation. Court also said that at the same time, necessity to preserve ecology and environment should not hamper economic and other developments. Thus, development and environment both must go hand in hand and there should not be development at the cost of environment and vice versa. There should be development by taking due care and ensuring protection of environment.

122. The concept of 'Buffer Zone' has been taken note in several authorities like ***M.C. Mehta v. Union Of India & Ors*, (1996) 8 SCC 462**, where question of impact of mining operation on the ecologically sensitive areas of Badkal Lake and Surajkund, Haryana, was considered. Court observed that in order to preserve environment and control pollution within the vicinity of the above tourist resorts, it was necessary to stop mining in that area. Question was, "what should be the extent of that area". NEERI's report dated 20.04.1996 was obtained who had opined that 200 meters green belt be developed at 1 km radius around the boundaries of two lakes. Court observed that this means 1200 meters are required for green belts. Then further 800 meters should be allowed as "cushion to absorb" the air and noise pollution generated by mining

operations. Court ultimately passed order that there would be no mining activity within two km radius of the above tourist resorts.

123. In ***M.C. Mehta (Taj Trapezium Matter) v. Union of India, (1997) 2 SCC 353***, damage being suffered by Taj Mahal due to air pollution was considered and Court said that no industry shall be permitted to run causing air pollution in “Taj Trapezium Zone”.

124. Similarly, in ***M.C. Mehta (Taj Trapezium Pollution) v. Union of India, (2001) 9 SCC 235***, for protecting damage to Taj Mahal, Court directed that no brick-kiln within 20 km radial of Taj Mahal and other significant monuments in Taj Trapezium and Bharatpur Bird Sanctuary shall be allowed to operate.

125. In ***M.C. Mehta v. Union of India, (2009) 6 SCC 118***, Court said that environment and ecology are national assets. They are subject to intergeneration equity.

126. In ***N.D. Jayal v. Union of India, (2004) 9 SCC 362***, Court held that:

“right to development cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The Right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of people’s well-being and realization of their full potential. It is an integral part of human rights.”

127. In ***K. Guruprasad Rao v. State of Karnataka, (2013) 8 SCC 418***, it was observed that preservation and protection of ancient and historical monuments due to mining activities in the nearby area was of importance. The Committee appointed by Court suggested that the area which is directly covered by such ancient monuments not only should be

protected but there should be more area beyond that which should be protected and both these areas were termed as 'Core Zone' and 'Buffer Zone'. This recommendation was accepted. Court said that creation of 'Core Zone' and 'Buffer Zone' would appropriately create balance between development activities, protection and preservation of ancient monuments.

128. When it comes to the question of fragile ecology, it has been held that it has to be preserved with more caution and care. In ***Animal and Environment Legal Defence Fund v. Union of India & Ors., (1997) 3 SCC 549***, question of protection of Wildlife Forest Tiger Reserve was considered and Court said that every attempt must be made to preserve fragile ecology of forest area and protect Tiger Reserve. Simultaneously, rights of Tribals, formerly living in the area, to keep body and soul together must also receive proper consideration.

129. In ***Pradeep Krishen v. Union of India, (1996) 8 SCC 599***, Court pointed out that total forest cover in our country is far less than the ideal minimum requirement of the total land and we cannot, therefore, afford any further shrinkage in forest cover in our country.

130. In ***M.C. Mehta v. Kamal Nath & Ors., (1997) 1 SCC 388***, referring to the "Doctrine of Public Trust" it was held that the said doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it will be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon Government to protect resources for enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

131. In ***Tata Housing Development Co. Ltd. v. Aalok Jagga & Ors.***, (2020) 15 SCC 784, shorter buffer area in respect of Sukhna Wildlife Sanctuary was deprecated and it was held that construction of residential project within a short distance from Wildlife Sanctuary cannot be permitted.

132. In the present case, in respect of Bangalore itself, issue of ‘**Buffer Zone**’ was considered by Tribunal in ***Forward Foundation & Ors.*** (*supra*). The issue of ‘Buffer Zone’ of wetland and Storm Water Drains, whether primary, secondary or tertiary, in the contest of ‘Agara Lake’ and ‘Bellandur Lake’ in Bengaluru, State of Karnataka was considered.

133. Three applicants namely, Forward Foundation, a Charitable Trust having its registered office at 24/B, Haralur Village, HSR Layout Post Bangalore-560102; Praja RAAG, Society registered under Karnataka Societies Registration Act, 1960 and having its registered office at C-103, Mantri Classic, 4th Block, Koramangala, Bangalore-560034 and Bangalore Environment Trust, registered office at A 1-Chartered Cottage, Langford Road, Bangalore 560025, filed OA No. 222/2014. They challenged allotment of land, alleging to be ecologically sensitive, by Karnataka Industrial Area Development Board (hereinafter referred to as ‘the KIADB’) to M/s. Mantri Techzone Pvt. Ltd. (hereinafter referred to as ‘Project Proponent i.e. PP’) vide notifications dated 23.04.2004 and 07.05.2004, respectively, for setting up Software Technology Park, Commercial and Residential complex, Hotel and Multi Level Car Parks. In the draft Master Plan of BDA, land was identified as ‘Protected Zone’ but in Master Plan finalized by BDA, it was identified as ‘Residential Sensitive’. Revenue Map shows multiple Rajakaluves (Storm Water Drain i.e. SWD) on the land in dispute. It was alleged that the project sit right

on the catchment and wetland area which feeds Rajakaluves, which in turn drains rain water into 'Bellandur Lake'. SEIAA, Karnataka required PP to submit a revised NOC from BWSSB for the project. It is also stated that project lies between Balendur Lake and Agara Lake. PP was to take protective measures to spare 'Buffer Zone' around Rajakaluves and also to commit that no construction would be carried out in the 'Buffer Zone'. It was alleged that NOC was issued covering 17404 square meters whereas built up area, as noted by SEAC, Karnataka, was 1350454.98 square meters. It was alleged that PP misrepresented facts before BWSSB for obtaining NOC stating that it was required only for residential units. KSPCB granted clearance on 04.09.2012, subject to fulfilling various conditions including that PP shall leave 'Buffer Zone' all along the valley and towards the lake. Allegations for violation of various conditions of consent and EC were also made. Besides that, project was right in the midst of a fragile wetland area which ought not to have been disturbed by development activity. It was alleged that fragile environment of catchment area has been exposed to grave and irreparable damage besides disturbing and damaging Rajakaluves. Proposed construction would affect the ground water table and Bore-wells which were the only source of water for thousands of households, fishing and agriculture which depends on Bellandur Lake, would also be severely affected. Applicants relied upon a Joint Legislative Committee Report of July 2005 under Chairmanship of Shri A.T. Ramaswamy stating that there were 262 water bodies in Bangalore city in 1961 which drastically came down because of trespass and encroachments. About 840 kms of Rajakaluves was encroached upon at several places and had become sewage channels. Another report relied upon was that of a Committee under Chairmanship of Hon'ble N.K. Patil, J. suggesting

immediate remedial action in order to remove encroachments on the lake area, Rajakaluves and preservations of lakes in and around Bangalore city. Other Expert Committees including Lakshman Rau Committee's reports were also cited on the matter of preservation, restoration or otherwise of existing banks in Bangalore Metropolitan area which had recommended to maintain good water surface in Bellandur Lake and ensure that water in lake is not polluted. An Advisory was issued by Government of India in August 2013 on conservation and restoration of water bodies in urban areas.

134. Matter was contested by PP in ***Forward Foundation and Ors. (supra)*** stating that it was incorporated with the objective of establishing an Information Technology Park and R & D Centre with facilities such as residential complexes, parks, educational centers and other allied infrastructure within a single compound. PP submitted a proposal to establish such Information Technology Park and other facilities to State Government and requested for allotment of land for the said project. A High Level Committee considered proposal on 21.06.2000. It was approved by State Government on 06.07.2000. State High Level Committee was informed by PP that project required 110 acres of land, 25 MW of power and 4 lakh liters of water per day from BWSSB. The land for project was initially notified vide Notification dated 10.02.2004 but subsequently it was allotted vide letter dated 28.06.2007 and Lease-cum-Sale Agreement was executed on 30.06.2007. Considering overall development in Bangalore city, there was a proposal of 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 1350454.98 square meters. Project was conceived as a Zero Waste discharge and located one and a half kms. away from the

southern-side of Bellendur Lake. Towards the North, adjacent to project, lay vast stretches of land belonging to Defence, and, towards East, lay the project of respondent-10 (therein) and another developer who was also developing a project on the western side. Plan was sanctioned on 04.07.2007 and renewed from time to time. Airport authority of India issued NOC on 09.04.2010; Bharat Sanchar Nigam Ltd. gave clearance vide letter dated 16.04.2010 and BWSSB issued NOC on 26.04.2011 for portion of proposed project. Bangalore Electric Supply Company Ltd. (hereinafter referred to as 'BESCOM') granted NOC; Environmental Clearance was issued by SEIAA, Karnataka vide letter dated 17.04.2012; Director General of Police issued NOC and KSPCB also accorded consent vide order dated 04.09.2012. The modified Building Plan was approved by KIADB vide letter dated 30.08.2012. PP claimed that it has not violated any conditions of EC or consent or environmental laws and has also not caused any damage to ecology or environment. It denied the contention that construction activity has blocked Rajakaluves and adversely affected the lake. It was also claimed that it has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and material, machinery, infrastructure, medical, sanitary facilities etc. and also availed financial assistance from various banks and financial institutions towards construction and execution of project; and various contracts were also signed by third parties.

135. KIADB while admitting to have approved building drawings and modified building drawings, stated, that PP was required to comply with Ecology and Environment Rules and obtain approvals from Development Authority and Pollution Control Board. Development Authority informed KIADB that construction activity in the catchment area in Bellandur Lake could drastically impact lake with deleterious effects and asked it to stop

construction activity whereupon a decision was taken by Board on 21.12.2013 to keep in abeyance the approval accorded and same was communicated to PP on 02.01.2014. PP was also directed to stop all construction activities on the allotted land. PP challenged it before Karnataka High Court which granted stay vide order dated 21.01.2014. Development Authority supported the case of applicant-Forward Foundation & Ors. stating that it was not aware of the project and came to know only when certain newspapers published reports. Thereupon officials visited the site and found large scale construction activities in the catchment area of Bellandur Lake and also that there was change in land use which in turn could directly affect catchment area of Bellandur Lake. Wetland area of Agara Lake had also shrunk which originally formed irrigation area for adjoining agricultural lands. Then it questioned the decision of KIADB and requested to get construction activities stopped and re-classify land as non-SEZ area.

136. Before Tribunal, matter was first considered vide judgment dated 07.05.2015. Tribunal formulated following questions for determination:

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

2. Whether the petition as framed and reliefs claim therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

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

4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petitions 36567-74 of 2013, before the Hon’ble High Court of Karnataka? And

5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?”

137. The first question with regard to limitation was answered in favour of applicants holding that the application was not barred by limitation. Second question was also answered in favour of applicants observing that allegations have been made that construction is being carried in the ‘Buffer Zone’ as well as over and around Rajakaluves; project is in the mist of fragile wet land area; project area is located between two lakes and therefore construction is in violation of Rule 4 of Wetland Rules, 2010; there is violation of ‘Buffer Zone’ restrictions; NOC by respondent-5 covered only 17404 square meters while build up area is 1350454.98 square meters, thus NOC was partial; EC was obtained without disclosure of correct facts, construction activities have severely disturbed and damaged Rajakaluve-running through the entire land and likely to result in disappearance thereof; under NGT Act, 2010, Tribunal has three jurisdictions; original appellate and special, enabling it to grant reliefs of compensation, restitution of property and environment growth; Section 14 gives a very wide jurisdiction to resolve and pass orders to decide 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 enactments, specified under Schedule 1; definition of ‘environment’ is very wide and comprehensive enough to take within its ambit all matters relating to environment; protection and improvement of environment are two fundamental aspects of environmental legislations; and in entirety, application does disclose cause of action that would squarely fall within the ambit of jurisdiction of Tribunal vested in it under Sections 14 & 15 of NGT Act, 2010.

138. Questions 3 & 4, in ***Forward Foundation & Ors. (supra)*** were also answered in favour of applicants i.e. against respondents. We are skipping details of the same, being not relevant for this case.

139. On question 5, Tribunal discussed allegations made by applicants with regard to violation of environmental laws. It observed in para 53 of judgment that most important aspect to be deliberated by it is, allegations of construction on the 'wetlands' and catchment areas of water bodies i.e. Agara and Bellendur lakes. Meaning and definition of 'wetlands' was considered and it was held that in common parlance, 'wetlands' are the areas where water is the primary factor controlling environment and associated plant and animal life. Indian definition of 'wetland' is an area of marsh, fens, heat land or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salty including areas of marine water, the depth of which at low tide does not exceed 6 meters. It includes all inland waters such as lakes reservoirs, tanks, backwaters, lagoons, straits, estuaries and men made wetland, and zone of direct influence on wetlands that is to say the drainage area or catchment region of wetlands as determined by authority but does not include main river, channels, paddy pits, and costal wetland covered under Notification of Govt. of India dated 19.02.1991.

140. Tribunal observed that Bengaluru city has many artificial lakes built for various ideological purposes, mainly to serve needs of irrigated agriculture and other allied purposes; study placed on record shows that lakes of Bengaluru occupy about 4.8% of city's geographical area (640 square meters) covering both urban and non-urban areas; number of lakes had rapidly falling and reduced to 81 in 1985; quality of water has

reduced due to discharge of industrial affluent and domestic sewage; conversation of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Further Tribunal said that water bodies in Bengaluru Urban district were subject to intense pressure due to the process of urbanization and increasing pollution resulting in loss of inter-connectivity in contrast to water bodies in rural Bangalore where less pressure from direct human activities was noticed. In 1995, 'National Lake Conservation Authority' (hereinafter referred to as 'NLCA') came up with National Lakes Conservation Plan (hereinafter referred to as 'NLCP') for Bangalore. It specifically aimed to raise highest state of environmental alarm for dwindling quality of remnants of the city's lakes. NLCP for Bengaluru came with the theme of integrated lake ecology with water quality. This plan aimed upon improving urban sanitation and health conditions, especially for weaker sections of society living within the lake catchment area. Plan also called for eco-friendly, low cost waste management bio system like engineered wetlands. In 2000, Research and Development Wing of KSPCB published report on comprehensive monitoring of lakes, in and around Bengaluru metropolitan area, to assess the state of water quality. As per Report, water quality of 44 selected lakes revealed that most lakes still remain highly polluted. "Lake Development Authority" constituted in January, 2002 identified 60 lakes for immediate restoration. Stressing upon Wetland Management Programme and what is needed, Tribunal said:-

*"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."*

(Emphasis added)

141. Tribunal also refers to a report of Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bengaluru on the need for "Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity". It is said that removal of wetlands will affect functional ability of lake and it would result in death of Bellendur Lake. RMP-2015 mentioned, for valley regions, 'No Development Zone' and provided 'Buffer Zone' of 30 meters around the lake while in respect of Primary, Secondary and Tertiary Rajakaluves/Storm Water Drains, it provided 'Buffer Zone' of 50, 25 and 15 meters, respectively, which is to be measured from center of the drain and on either side of the drain.

142. Tribunal said that to analyze environmental and ecological impact on the project, matter may be divided in two parts: (1), what are the irregularities or breaches by PP, i.e. respondents-9 and 10, and; (2) likely impact of these projects upon the environment and ecology of the area in question, particularly on the water bodies.

143. Tribunal summed up its conclusion in para 72. It was held that there is sufficient material by way of record, Google images and other documents to show that Bellandur Lake and even other lakes for that matter have wetlands and catchment areas. There are encroachments on Rajakaluves as well as catchment areas of water bodies and adverse impact of this colossal mixed development project got attention of all concerned, resulting in inspection by Lake Development Authority and other authorities and comments on adverse impacts on environment and ecology.

144. An argument was raised in ***Forward Foundation & Ors. (supra)*** that similar construction and projects of others are also existing or in process. Tribunal in para 79 of judgment dated 07.05.2015, noted the above submissions, and said:-

“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.”

145. The argument that huge investment has been made and even third party interests have been created was not accepted. It was held that PP had started construction even prior to grant of EC, hence cannot be permitted to take advantage of its own wrong. Tribunal held, if in the interest of environment, ecology and protection of lakes and wetlands, the project or some part thereof is demolished, it is the requirement of law. Since construction and allied activities were carried, contrary to law, they would be deemed to have caused pollution not only to the environment but more particularly lakes. It had also caused obstructions of Rajakaluves in the area.

146. By order dated 07.05.2015, OA No. 222/2014 was disposed of with 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, constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:

a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.

b) CEO of the Lake Development Authority, Karnataka State.

c) Chief Town Planner of BBMP, Bangalore.

d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.

e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

f) Dr. Siddharth Kaul, former Advisor to MoEF.

g) A Senior Officer from the National Institute of Hydrology, Roorkee.

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

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

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

5) Committee should submit in its report, if these projects have any adverse impacts upon the surrounding ecology and environment,

with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent Nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

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

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

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

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

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

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

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

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

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

147. Against Tribunal’s judgment dated 07.05.2015 in **Forward Foundation & Ors. (supra)**, PPs preferred Civil Appeal No. 4829 of 2014 and 4832 of 2015 before Supreme Court. They contended that they had no opportunity to address Tribunal on merits and only on preliminary issues arguments were advanced but judgment had been delivered on merits. The appeals were disposed of by Supreme Court vide judgment dated 20.05.2015, which reads as under:-

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

With the **aforesaid liberty granted** to the petitioners, **the appeals are disposed of.** Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However,

it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

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

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

148. PPs filed MA No. 596/2015 and MA No. 603/2015. Both these applications were disposed of by order dated 06.04.2016, which reads as under:

“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.”

149. The matter was finally heard by Tribunal and decided vide judgment dated 04.05.2016. On the issues of limitation, non-disclosure of cause of action, *res judicata* and pendency of Writ Petition in High Court, (questions 1 to 4 in the judgment dated 07.05.2015), Tribunal observed in para 12 that neither PPs have complained that they were not heard on these questions nor they have advanced any argument on those issues, therefore, it reiterated findings already returned on these issues in the judgment dated 07.05.2015. The only issue remained was question no. 5. On this aspect, Tribunal heard parties and reformulated issue into seven questions as under:

- “1. Whether Respondent No. 9 has commenced the construction of the project before the granting of Environmental Clearance?
2. Whether Respondent No. 9 has encroached any part of the Agara Lake and thereby caused environmental degradation?

3. *Whether Respondent No. 9 has violated any of the conditions of the Environmental Clearance granted?*
4. *Whether the Environmental Clearance granted to the project of Respondent No. 9 is to be reviewed?*
5. *Whether Respondent No. 10 has commenced construction activities before granting of Environmental Clearance?*
6. *Whether Respondent No. 10 has dumped muck on the adjacent Rajakaluves and thereby reduced its width and caused any environmental damage?*
7. *Whether Respondent No. 9 and 10 are liable to pay environmental compensation and if so the quantum?"*

150. All the above questions were decided vide judgment dated 04.05.2016. Questions 1 to 4 were considered together and Tribunal findings in brief are as under:

- i. The submission of respondent-9 cannot be accepted that portion of lake was not encroached upon by it.
- ii. Respondent-9 encroached 3.24 acres of the lake in Survey No. 43 and annexed the same with the land allotted to them as well the land obtained on private negotiations.
- iii. Low-lying area was filled up and excavation work for construction work was undertaken.
- iv. Respondent-9 had commenced construction much before 17.02.2012, the date when EC was granted.
- v. Respondent-9 had also tampered with the Rajakaluves.
- vi. We cannot agree with the submission that no Kharab land is involved.
- vii. It is clear that respondent-9 did encroach a portion of lake and caused environmental degradation by putting debris, muck and excavated soil into the lake and Rajakaluves and even filled up the creek of the lake which originally existed in

the property and is, therefore, guilty of the environmental damage and degradation.

151. Coming to the last three questions no. 5, 6 and 7, Tribunal held that PPs commenced constructions of their projects prior to grant of EC; multiple Rajakaluves were flowing through project sites and there was encroachment on Rajakaluves; respondent-9 dumped muck and excavated soil on a portion of the lake and all these activities caused environmental degradation, therefore, they are liable to pay environmental compensation. Tribunal maintains 5% of project cost as environmental compensation, in respect of respondent-9, but reduced it to 3% to respondent-10. Thereafter, while disposing of original application, Tribunal issued certain General and Specific directions as under:

“General Conditions or directions:

1. *In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP – 2015 provides 50m from middle of the Rajkalewas as ‘Buffer Zone’ in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, **we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Water bodies and wetlands shall be maintained as below:-***
 - (i) *In the **case of Lakes, 75m from the periphery of water body to be maintained as green belt** and ‘Buffer Zone’ for all the existing water bodies i.e. lakes/wetlands.*
 - (ii) **50m from the edge of the primary Rajkulewas.**

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

(iv) **25m from the edges in the case of tertiary Rajkulewas.**

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

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

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

2. *The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.*
3. *Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the **entire area falls in critical zone in terms of ground water exploitation.** Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:*
 - i. ***At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately.*** Due considerations should also be given for identification of source of supply of water and ***this should be a pre-requisite for grant of EC.***

- ii. All the project proponents should necessarily use only treated sewage water for construction purpose and this should be **reflected in EC as a condition for construction phase.**
- iii. Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific Conditions/Directions for Respondent 9:

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

- i. Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey no. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a 'Buffer Zone' of 75 m should be provided between the lake and the project area and this should be maintained as green area.
- ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50 m 'Buffer Zone' on the side of the project area from the edge of the rajkalewa should be maintained as green belt.
- iii. Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent no. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However, on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agara lake and the Belandur Lake, respondent no. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a 'Buffer Zone' of 15 m on either bank maintained as green belt.
- iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake

side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

- v. **The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.**
 - vi. **The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.**
 - vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.
10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No. 10, we reduce

environmental compensation payable by Respondent No. 10 to Rs. 73 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General Directions:

1. *We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.*
2. *SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.*
3. ***The distances in respect of 'Buffer Zone' specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru.***
4. *We hereby direct the **State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time.** Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.*
5. *Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the 'Buffer Zone' of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State*

Administration and recover charges thereof from the said Respondents.

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

152. Several Civil Appeals were filed before Supreme Court and decided *vide* judgment dated 05.03.2019, i.e., **Mantri Techzone Private Limited v. Forward Foundation & Ors., (2019) 18 SCC 494**. Civil Appeals No. 5016 of 2016 and 8002-8003 of 2016 were filed by respondents-9 & 10, i.e., PPs in that matter and Civil Appeals No. 4923-24 of 2017 were filed by State of Karnataka. PPs, i.e., respondents-9 and 10 challenged Tribunal's both the judgments and orders dated 07.05.2015 and 04.05.2016, but State of Karnataka challenged only part of the judgment dated 04.05.2016, contained in direction no. 1 in General Conditions regarding length of 'Buffer Zone' of lakes and Rajakaluves. Supreme Court, firstly, considered scope of appeal under Section 22 and observed that appeal is permissible on any one or more grounds specified in Section 100 of Code of Civil Procedure (hereinafter referred to as "CPC"), i.e., if there has arisen a "substantial question of law" which means that

an appellant cannot seek to argue entire case for warranting wholesale re-appreciation of evidence. There cannot be fresh appreciation or re-appreciation of facts in an appeal under Section 22 of NGT Act, 2010. Considering question of maintainability of application before Tribunal, Supreme Court held that Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection, conservation of forests and other natural resources including enforcement of any legal right relating to environment. Tribunal has special jurisdiction for enforcement of environmental rights. Referring to the jurisdiction of Tribunal under Sections 14, 15 and 16 of NGT Act, 2010, it was held that Section 14 provides jurisdiction over all civil cases where a substantial question relating to environment is involved but such question should arise out of implementation of the enactments specified in Schedule I; section 15(1)(a) confers power upon Tribunal to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I; and under Section 15(1)(b) and 15(1)(c) , Tribunal can provide for restitution of property damaged and restitution of environment for such area or areas as Tribunal may think fit. Supreme Court pointed out that Section 15(1)(b) and 15(1)(c) cannot be narrowed down to bring at par with Section 15(1)(a) since, sub-sections (1)(b) and (1)(c) have not been made relatable to Schedule I enactments of NGT Act, 2010. Thus, a wide range of power has been conferred upon Tribunal with respect to restoration of environment; Court also observed that Section 15(1)(c) read with Section 20 of NGT Act, 2010 is an entire island of power and jurisdiction, Principles of sustainable development, Precautionary Principle and Polluter Pays, which were propounded vide multiple judicial pronouncements and embedded as a bedrock of environmental

jurisprudence under NGT Act, 2010. Wherever and whenever environment and ecology are being compromised and jeopardized, Tribunal can apply Section 20 for taking restorative measures in the interest of environment. Supreme Court declined to read provisions of NGT Act, 2010 so as to narrow down jurisdiction of Tribunal in the matter of environmental protection. Court said that an interpretation which would be in favour of conferring jurisdiction shall be followed. It also refers to Section 33 of NGT Act, 2010 and observed that it gives overriding powers to Tribunal over anything inconsistent contained in KTCP Act, 1961, KMC Act, 1976 and RMP-2015. Court further said:

“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 Zone’s around specific lakes and water bodies in contradiction with zoning regulations under these statutes or RMP”.

153. Considering question of limitation, Supreme Court found that application filed before Tribunal was not under Section 14 but covered by Section 15 of NGT Act, 2010. In fact, no provision was mentioned in the application. Observing that non-mention of or erroneous mention of the provision of law would not be of any relevance if Court had requisite jurisdiction to pass order and being a mere regularity, it would not vitiate judicial order of Tribunal, Court held that the application was well in time since for Section 15, five years from the date on which cause for such compensation or relief arose, is the limitation. Findings of Tribunal that construction had commenced before grant of EC based on the excavation of soil and dumping of debries, etc. was seriously challenged by PP but rejecting the same, Court noticed, findings recorded in para 72 of judgment dated 04.05.2016 are based on documents that were available on record and also on the pleadings of parties. The issue relating to

principal of *res judicata* or constructive *res judicata* raised by PP on the ground that writ petition was filed in High Court of Karnataka was also negated and otherwise findings of Tribunal were confirmed. The appeals of PPs were, accordingly, dismissed.

154. State of Karnataka's appeal was confined to direction/condition no.

1. State's appeal was allowed setting aside direction/condition no. 1 except direction issued against respondents-9 and 10. Operative part of Supreme Court's judgment in ***Mantri Techzone Private Limited v.***

Forward Foundation & Ors. (supra), read as under:-

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

62.1 Civil Appeal No. 5016 of 2016 and Civil Appeal Nos. 8002-8003 of 2016 filed by the appellants/respondent nos. 9 and 10 are hereby dismissed. The impugned judgment and order in are concerned is sustained.

*62.2 All the other appeals are hereby allowed and the **direction/condition No. (1) in the order dated 4.5.2016 is hereby set aside except the direction issued against respondent Nos. 9 and 10.***

(Emphasis Added)

OA-1-Final Order:

155. Before coming to appeal and OA-2, we may mention that in OA-1, PP or its representative have not raised any issue, may be for the reason that the Report submitted by First Joint Committee has attained finality in respect of Survey nos. 71/1, 71/2, 72/2, 73 and 74/5B and Tribunal's directions issued vide order dated 09.05.2019 for taking action against PP have also attained finality after dismissal of ***Civil Appeal No. 5195/2019, Ramesh Kumar vs. Mahadevpura Parisara Samrakshane Mattu Abhivrudhi Samiti (MAPSAS) & Ors.*** by Supreme Court, filed by PP-Shri Ramesh Kumar against Tribunal's order dated 09.05.2019. Before us, nothing has been placed that project of PP-Shri

Ramesh Kumar was in any manner, valid or legal. No argument on this aspect has been advanced. Hence, in view of order already passed on 09.05.2019 based on the report submitted by First Joint Committee, we allow Original Application, i.e., OA No. 281/2019. Order for taking necessary action against PP, Ramesh Kumar as well as demolition of constructions illegally raised on the disputed site, are maintained and reiterated. The respondents competent authorities shall proceed in accordance with law to enforce environmental laws by initiating prosecution, demolishing the structures, illegally raised, if not, already demolished, restore land to its original position, make assessment of cost of restoration and damage to environment, assess environmental compensation against PP-Ramesh Kumar and realize the same in accordance with law, if not already done, expeditiously and in any case within 3 months from the date of this judgment.

Appeal & OA-2-Discussion on merit:

156. Now, we come to Appeal and OA-2 preferred by H.P. Rajanna relating to M/s. Wonder Projects Development Private Limited and its holding company M/s. Godrej Properties Limited.

157. **First question** comes up for consideration is, “whether PP submitted incorrect and/or incomplete and/or false information(s) to obtain EC dated 10.01.2018, and, if so, its effect on other permissions/consents/clearances issued by other statutory authorities and/or the project itself”.

158. To answer, it would be appropriate to examine various applications and orders passed by different authorities in respect of project in question.

Documents relating to change of land use:

159. The land of disputed project was part of three Survey numbers, described as under:

Sl. No.	Survey no.	Area
i	61/2	03 acres 05 guntas
ii	62	03 acres 02 guntas
iii	63/2	06 acres 11 guntas
Total		12 acres 18 guntas

160. The aforesaid land is situated in Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk. The land was agriculture under Revenue records. Vide order dated 31.03.2006 passed by Deputy Commissioner, Bengaluru, Urban District, it was converted to non-agriculture. It was declared as industry (Hi-Tech) in RMP-2015. PP vide application dated 25.11.2016 and 06.12.2016 requested for change of land use under Section 14(a) of KTCP Act, 1961 from Industrial (High-Tech) to Residential use. Matter was examined by BDA in its meeting dated 17.08.2017. It decided to submit proposal for conversion to Karnataka Government through BBMP. The permission was granted by Karnataka Government vide order dated 24.10.2017, relevant extract is as under:-

“In the background of the points explained in the proposal, u/s 14(a) of Karnataka Town and Country Planning Act, 1961, **Government has given approval for the conversion** of 03 Acre 5 Guntaas in 61/2, 03 Acre 02 Guntaas in 62, 06 Ac 11 Guntaas in 63/2, Total **12 Acre 18 Guntaas**, Kasavanahalli Village, Varthur Hobli, BANGALORE EAST Taluq **from industrial use to residential use, subject to the following condition:**

1. If there is any proposal in the Master Plan for extension/widening of the road, or up-gradation of State High way or National Highway, necessary land to be preserved at the time of approval of Plan/lay out, necessary steps to be taken for rain water harvesting.
2. If there are any Civil disputes, party to be bound by Court

order/Judgment.

3. Land Conversion Order automatically gets cancelled if false information is submitted, or if any information is found wrong/forged.
4. Other conditions that may be imposed by BMRDA.
5. **'Buffer Zone'/land to be preserved** as per rules for Tank/Canal H.T. Line/sub-station/Feeder, rail mass, transit line, Railway Track, passing through the said land.
6. Original records to be examined/verified by BMRDA at the time of giving approval.
7. **Consent letter to be obtained from State Pollution Control Board, before using the land for proposed purpose.**
8. Change in land use is not a record for claiming right over property, if any case is pending before any Court U/s 136 (3) Land Revenue Act, 1964 or land reforms at, CONVERSION OF LAND/Usage is subject to final orders/Judgment, in this regard Applicant shall submit a Declaration that the he is bound by final Judgment, that he will not claim fees paid for change of land and shall comply with it.
9. Authority has given administrative approval/sanction for the case recommended for change of land use/conversion. In such cases, it is the responsibility of the Authority to minutely examine technical points and if there are any lapses in this change of land use, AUTHORITY will be solely responsible for it.
10. Zonal Regulation's conditions to be strictly followed.
11. **Order passed by the NATIONAL GREEN TRIBUNAL in O.A.s No. 222/2014 on 04.05.2016, prescribing 'Buffer Zone' around tanks/canals/rajakuluve has to be kept in mind at the time of sanction of building plan.**
12. Fees to be obtained/remitted u/s 18 of KARNATAKA TOWN and COUNTRY PLANNING Act, 1961.
13. Said change of land use/conversion to be adopted in full/comprehensive manner at the time of revision of MASTER PLAN.
14. It is **mandatory to obtain N.O.C. from departments/authorities, concerned before taking up any**

development works in the land under reference.

15. Any other conditions that the Authority may impose.”

161. The above order dated 24.10.2017 was issued by Under Secretary to Government, Department of Urban Development, State of Karnataka. Consequential letter of Confirmation for change of land use was issued by DA on 08.12.2017.

Documents relating to grant of EC:

162. PP filed application dated 14.10.2017 in Form 1 and 1A before SEIAA, Karnataka for grant of EC as per the procedure laid down in EIA 2006. This application was submitted even before conversion was allowed vide order dated 24.10.2017.

163. Interestingly, before order could be passed by Government of Karnataka permitting change of land use, PP filed application dated 14.10.2017 in Form 1 and 1A, accompanied by Conceptual Plan as required in EIA 2006, since, PP claimed that built up area is less than 150000 square meters.

164. From perusal of EC dated 10.01.2018, we find that SEAC sought some additional clarifications. Thereafter SEAC, Karnataka, in its meeting dated 25.11.2017 recommended issue of EC to PP (M/s. Wonder Projects Development Private Limited), only on the basis of facts stated in the application i.e. Form 1, IA and conceptual plan. It does not appear that there was any site inspection either by the official(s) or representative(s) of SEAC, Karnataka. Similarly on the basis of aforesaid documents and recommendations of SEAC, SEIAA, Karnataka in its meeting dated 20.12.2017 decided to accord EC and consequently, EC dated 10.01.2018 was issued. These authorities did not bother to enquire

about difference in information given in DP submitted for sanction to BDA vis-a-vis application for EC in respect of lake, drains and built up area as well units (flats).

165. Since for issue of EC, statutory provisions are contained in EIA 2006, as amended from time to time, we find it appropriate to have a bird eye view of EIA 2006.

EC (Environment Clearance), i.e., EIA 1994, 2006 and relevant amendments:

166. Section 3(1) of EP Act, 1986 read with Section 2(v), confer power upon Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section (3) refers to certain specific subject matters in addition to general power conferred by sub-section 1. Central Government has issued various orders and directions in exercise of above powers under section 3. In ***M.C. Mehta v. Union of India, (2002) 4 SCC 356***, it has been held that such directions are binding on all persons concerned.

167. EP Rules, 1986 have been framed in exercise of power under Sections 6 and 25 of EP Act, 1986. Rule 4 thereof, states that any direction issued under Section 5 shall be in writing. Rule 5 contemplates certain factors to be taken into consideration by Central Government while exercising power for prohibition/restriction on the location of industries and/or carrying on processes and operations in different areas and these factors are detailed in Clause (i) to (x) of Section 5(1). Procedure for issuing such directions imposing prohibition, restriction etc. is given in sub-section (2) of Section 5.

168. Exercising powers under Section 3(1)(2)(v) of EP Act, 1986, read with Rule 5(3)(d) of EP Rules, 1986, MoEF issued notification dated 27.01.1994 on Environmental Impact Assessment of Development Projects (hereinafter referred to as “EIA 1994”). It provided that expansion and modernization of any activity (if pollution load is to exceed the existing one) or a new project, listed in Schedule I of the said Notification, shall not be undertaken in any part of India unless it has been accorded EC by Central Government in accordance with the procedure specified in the said Notification.

169. In the light of experience and to make more comprehensive provisions, a draft notification of EIA was published in Gazette of India, dated 15.09.2005 inviting objections and suggestions. After considering objections and suggestions received, final notification was issued on 14.09.2006, i.e., EIA 2006, in supersession of earlier notification dated 27.01.1994, i.e., EIA 1994. It required a ‘Prior EC’ from Central Government or State Level Environment Impact Assessment Authority (i.e. SEIAA), constituted by Central Government under sub-Section (3) of Section 3 of EP Act, 1986. All new projects or activities, expansion and modernization of existing projects or activities listed in the Schedule to the aforesaid notification would require ‘Prior EC’.

170. Para 2 of EIA 2006 states that following projects or activities shall require ‘Prior EC’ from concerned regulatory authority, which shall be referred as MoEF for matters falling under Category ‘A’ in the Schedule and at State level, SEIAA, for matters falling under Category ‘B’ in the Schedule, before any construction work, or preparation of land by project management, except for securing land, is started on the project or activity.

171. The projects are categorized as 'A' or 'B', under para 4. For 'A' Category project, MoEF is the competent authority to grant prior approval while for 'B' category projects etc., it is SEIAA. Para 4 (relevant extract), reads as under:-

“(i) All projects and activities are broadly categorized in to two categories-Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and manmade resources.

(ii) **All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF)** on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(iii) All projects or activities included as **Category 'B'** in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be considered at Central Level as a Category 'A' project;”

172. Procedure of examination of project bring in Expert Appraisal Committee (i.e., EAC) in case of approval by MoEF&CC and State Expert Appraisal Committee (i.e., SEAC), if approval is by SEIAA. The process of examination comprises of three steps, i.e., screening, scoping and appraisal.

173. Para 6 talks of application for 'Prior EC' and reads as under:-

“6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, **before commencing any construction activity, or preparation of land, at the site by the applicant.** The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, **in case of construction projects or activities** (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, **a copy of the conceptual plan shall be provided,** instead of the pre-feasibility report.”

174. Thereafter, procedural stages in regard to ‘Prior EC’ for new projects are given in para 7. Para 8 confers power upon the concerned Competent Authority to grant or reject application for ‘Prior EC’. There is time prescribed within which decision is required to be taken by Competent Authority for rejection of want of EC failing which clause (iii) of para 8 provides that EC shall be deemed to have been granted or denied in terms of final recommendations of Expert Appraisal Committee, i.e., EAC or SEAC, as the case may be. Clause (v) of para 8 states that clearance from other bodies or authorities shall not be required prior to receipt of applications for ‘Prior EC’ of projects or activities, etc., unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons. Then para 8 clause (vi) of EIA 2006 consider the matters where incorrect information(s) have been given or there is a case of concealment of facts etc. and says:

“(vi) **Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis.** Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

175. In the Schedule, building and construction project is at Item 8. It shows that 'Prior EC' would be required for construction projects involving more than 20000 square meters of built-up area. The projects involving built-up area of more than 50000 square meters but less than 150000 square meters are in the Category 'B1'. Projects in Category 'B', i.e., 'B1' or 'B2' involving construction activities are to be granted 'Prior EC' by SEIAA while projects in Category 'A', i.e., where built-up area is more than 150000 square meters, Competent Authority to grant 'Prior EC' is MoEF&CC.

176. We are not referring to all the amendments made in EIA 2006 which are 58 in number up to 17.02.2020, but would refer some amendments relevant for the purpose of present case.

177. Vide EIA Notification dated 04.04.2011, published in Government of India's Gazette Extraordinary dated 06.04.2011, in Item 8(a), column (5) was substituted as under:-

“The built up area for the purpose of this Notification is defined as “the built up or covered area on all the floors put together including **basement(s) and other service areas, which are proposed in the building/construction projects.**”

178. Vide Notification dated 25.01.2012, published in Government of India's Gazette Extraordinary dated 25.01.2012, in appendix 5, para 3 was substituted as under:-

“3. Where a public consultation is not mandatory, the appraisal shall be made on the basis of prescribed application in Form-I and environment impact assessment report, in the case of all projects and activities (other than item 8 of the Schedule), except in case where the said project and activity falls under category 'B2', and in the case of items 8(a) and 8(b) of the Schedule, considering their unique project cycle, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned **shall appraise projects or activities on the basis of Form-1, Form 1A, conceptual plan and the environment impact assessment report [required only for projects listed 8(b)]** and make recommendations on the project

regarding grant of environment clearance or otherwise and also stipulate the conditions for environmental clearance.”

179. Notification dated 02.12.2014, published in Government of India’s Gazette Extraordinary of the same date, amended Item 8 in the Schedule and it was substituted as under:-

“

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

”

180. By Notification dated 15.01.2016 published in Government of India’s Gazette Extraordinary of the same date, para 6 relating to application for ‘Prior EC’ was substituted as under:

“6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases **shall be made by the project proponent in the prescribed Form**

1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II after the identification of prospective site(s) for the project and/or activities to which the application relates; and in Form 1M for mining of minor minerals up to five hectare under Category ‘B2’ projects, as given in Appendix VIII, before commencing any construction activity, or preparation of land, or mining at the site by the project proponent. The project proponent shall furnish along with the application, a copy of the pre-feasibility project report, in addition to Form 1, Form 1A, and Form 1M; and in case of construction projects or activities (Item 8 of the Schedule), a copy of the conceptual plan shall be provided instead of pre-feasibility report.”

181. By Notification dated 09.12.2016, published in Government of India's Gazette Extraordinary of the same date, demand of Ease of Doing Responsible Business and streamlining permissions for buildings and construction sector, important for providing houses, was considered objectively. Thereafter para 14 was inserted in EIA Notification 2006, which reads as under:

“14. Integration of environmental condition in building bye-laws.-

- (1) The **integrated environmental conditions** with the building permission being **granted by the local authorities** and the construction of buildings as per the size **shall adhere to the objectives and monitorable environmental conditions as given at Appendix-XIV.**
- (2) The States adopting the objectives and monitorable environmental conditions referred to in subparagraph (1), in the building bye-laws and relevant State laws and incorporating these conditions in the approvals given for building construction making it legally enforceable shall not require a separate environmental clearance from the Ministry of Environment, Forest and Climate Change for individual buildings.
- (3) The **States may forward the proposed changes in their bye-laws and rules to the Ministry of Environment, Forest and Climate Change, who in turn will examine the said draft bye-laws and rules and convey the concurrence to the State Governments.**
- (4) When the State Governments notifies the bye-laws and rules concurred by the Ministry of Environment, Forest

and Climate Change, the Central Government may issue an order stating that no separate environmental clearance is required for buildings to be constructed in the States or local authority areas.

- (5) The local authorities like Development Authorities, Municipal Corporations, may certify the compliance of the environmental conditions prior to issuance of Completion Certificate, as applicable as per the requirements stipulated for such buildings based on the recommendation of the Environmental Cell constituted in the local authority.
- (6) **The State Governments where bye-laws or rules are not framed may continue to follow the existing procedure of appraisal for individual projects and grant of Environmental Clearance for buildings and constructions as per the provisions laid down in this notification.**
- (7) For the purpose of certification regarding incorporation of environmental conditions in buildings, the Ministry of Environment, Forest and Climate Change may empanel through competent agencies, the Qualified Building Environment Auditors (QBEAs) to assess and certify the building projects, as per the requirements of this notification and the procedure for accreditation of Qualified Building Auditors and **their role as given at Appendix-XV.**
- (8) **In order to implement the integration of environmental condition in building bye-laws, the State Governments or Local Authorities may constitute the Environment Cell (herein after called as Cell), for compliance and monitoring and to ensure environmental planning within their jurisdiction.**
- (9) The Cell shall monitor the implementation of the bye-laws and rules framed for Integration of environmental conditions for construction of building and the Cell may also allow the third part auditing process for oversight, if any.
- (10) The Cell shall function under the administrative control of the Local Authorities.
- (11) The composition and functions of the Cell are given at Appendix-XVI.
- (12) **The Local Authorities while integrating the environmental concerns in the building bye-laws, as per their size of the project, shall follow the procedure, as given below:**

BUILDINGS CATEGORY '1' (5,000 to < 20,000 Square meters)

A Self declaration Form to comply with the environmental conditions (Appendix XIV) along with Form 1A and certification by the Qualified Building Environment Auditor to be submitted online by the project proponent besides application for building permission to the local authority along with the specified fee in separate accounts. Thereafter, the local authority may issue the building permission incorporating the environmental conditions in it and allow the project to start based on the self declaration and certification along with the application. After completion of the construction of the building, the project proponent may update Form 1A online based on audit done by the Qualified Building Environment Auditor and shall furnish the revised compliance undertaking to the local authority. Any non-compliance issues in buildings less than 20,000 square meters shall be dealt at the level of local body and the State through existing mechanism.

OTHER BUILDINGS CATEGORIES ($\geq$ 20,000 Square meters)

The **project proponent may submit online application in Form 1A** alongwith specified fee **for environmental appraisal and additional fee for building permission**. The fee for environmental appraisal will be deposited in a separate account. **The Environment Cell will process the application and present it in the meeting of the Committee headed by the authority competent to give building permission in that local authority.** The Committee will appraise the project and stipulate the environmental conditions to be integrated in the building permission. After recommendations of the Committee, the building permission and environmental clearance will be issued in an integrated format by the local authority.

The project proponent shall submit Performance Data and Certificate of Continued Compliance of the project for the environmental conditions parameters applicable after completion of construction from Qualified Building Environment Auditors every five years to the Environment Cell with special focus on the following parameters:-

- (a) Energy Use (including all energy sources).
- (b) Energy generated on site from onsite Renewable energy sources.
- (c) Water use and waste water generated, treated and reused on site.
- (d) Waste Segregated and Treated on site.
- (e) Tree plantation and maintenance.

After completion of the project, the Cell shall randomly check the projects compliance status including the five years audit report. The State Governments may enact the suitable law for imposing

penalties for non-compliances of the environmental conditions and parameters. The Cell shall recommend financial penalty, as applicable under relevant State laws for non-compliance of conditions or parameters to the local authority. On the basis of the recommendation of the Cell, the local authority may impose the penalty under relevant State laws. The cases of false declaration or certification shall be reported to the accreditation body and to the local body for blacklisting of Qualified Building Environment Auditors and financial penalty on the owner and Qualified Building Environment Auditors.

No Consent to Establish and Operate under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 will be required from the State Pollution Control Boards for residential buildings up to 1,50,000 square meters.”

182. In the Schedule, Item 8, again there was substitution for sub items 8(a) and (b) as under:-

“

(1)	(2)	(3)	(4)	(5)
“8		Building or Construction projects or Area Development projects and Townships		
8(a)	Building and Construction projects		≥20,000 sq. mtrs and <1,50,000 sq. mtrs of built up area	The term “built up area” for the purpose of this notification is the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the building or construction projects. Note 1.- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid and implement environmental conditions given at Appendix-XIV. Note 2.- "General Conditions" shall not apply Note3.- The exemptions granted at Note 1 will be available only for industrial shed

				after integration of environmental norms with building permissions at the level of local authority.
8(b)	Townships and Area Development Projects	≥3,00,000 sq. mtrs for built up area or Covering an area ≥ 150 ha	≥1,50,000 sq. mtrs and <3,00,000 sq. mtrs built up area or covering an area ≥50 ha and <150	Note.- “General Conditions” shall not apply.”

183. With reference to para 14(7), inserted vide Notification dated 09.12.2016, Appendix-XV comes into picture and therein the relevant provisions pertaining to the construction of 50000 square meters to 150000 square meters specific provisions were made in respect of Topography and Natural Drainage, Water Conservation-Rain Water Harvesting and Ground Water Recharge, Solid Waste Management, Sewage Treatment Plant, Energy, Air Quality and Noise, Green Cover, Top Soil Preservation and reuse, Transport, Environment Management Plan. We are concerned with the matter relating to Topography and Natural Drainage and the same read as under:

“

MEDIUM	S.N.	ENVIRONMENTAL CONDITIONS
Topography and Natural Drainage	1	The natural drain system should be maintained for ensuring unrestricted flow of water. No construction shall be allowed to obstruct the natural drainage through the site. No construction is allowed on wetland and water bodies. Check dams, bio-swales, landscape , and other sustainable urban drainage systems (SUDS) are allowed for maintaining the drainage pattern and to harvest rain water. Buildings shall be designed to follow the natural topography as much as possible. Minimum cutting and filling should be done.

”

184. Appendix-XVI read with para 14(11) talks of setting up of an Environmental Cell which must consist of at least three dedicated

Experts in the fields of Waste management (solid and liquid); Water conservation and management; Resource efficiency including Building materials; Energy Efficiency and renewable energy; Environmental planning including air quality management; and Transport planning and management. It also says that Cell shall induct at least two outside Experts as per the requirements and background of dedicated Experts. The function of Cell area is also mentioned therein.

185. Subsequent Notifications up to the period 14.10.2017, when PP in the present case submitted application for grant of 'Prior EC' are not relevant hence are not being referred.

186. Provisions of EIA Notification, 2006 and the process thereunder have been considered in detail, recently, by Supreme Court in ***Hanuman Laxman Aroskar vs. Union of India, (supra)***. It was an appeal taken to Supreme Court, from a judgment/order dated 21.08.2018 passed by this Tribunal in ***Appeal No. 5/2018*** (earlier *Appeal No. 61/2015/WZ*), ***Federation of Rainbow Warriors vs. Union of India & Ors. and Appeal No. 6/2018, Hanuman Laxman Aroskar vs. Union of India***, wherein grant of EC for development of green field International Airport at Mopa, Goa, was challenged. Project was in category 'A' hence as per EIA 2006 'Prior EC' was to be granted by MoEF. EC was granted on 28.10.2015. It was challenged by M/s. Federation of Rainbow Warriors in Appeal No. 61/2015 at Tribunal's Western Zonal Bench, Pune. Another Appeal No. 1/2016 was filed by Hanuman Laxman Aroskar at NGT, Western Zonal Bench, Pune. Both these appeals were transferred to Principal Bench at New Delhi and numbered as Appeal No. 5 and 6 of 2018 respectively. One of the issues raised before Supreme Court was; PP did not give complete information in Form 1 submitted to the

Competent Authority for grant of EC; PP is duty bound to make a proper disclosure and highest level of transparency is required; and there was concealment of certain facts by leaving certain columns blank or by not giving required details. It was contended that for these reasons, application for EC ought to have been rejected.

187. Supreme Court considered scheme of EIA 2006 in detail. Going into historical backdrop of EIA 2006, Court said that by Constitution (Forty-second Amendment) Act 1976 w.e.f. 03.01.1977, Article 48A was inserted to the Constitution which mandates that State shall endeavor to protect and improve environment and safeguard forests and wildlife of the country; Article 51A(g) of Constitution places a corresponding duty on every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures; following decisions taken at United Nations Conference on Human Environment held at Stockholm (Stockholm Conference) in June 1972, in which India also participated, Parliament enacted EP Act, 1986 to protect and improve environment and prevent hazards to human beings, other living creatures, plants and property; on 27.01.1994, MoEF&CC, in exercise of powers under Section 3(1) read with (2)(v) of EP Act, 1986 and Rule 5(3)(d) of EP Rules, 1986, issued notification, S.O. 60(E), 1974, imposing restrictions and prohibitions on the expansion and modernization of any activity or new project unless an EC was granted under the procedure stipulated in the notification; Notification contemplated that any person undertaking a new project or expanding and modernizing an existing project, would submit an application to the Secretary, MoEF; application to be made in accordance with Schedule, also provided that, it shall accompany project report including EIA Report, an Environment Management Plan (hereinafter referred to as

‘EMP’) and other details as per the Guidelines issued by Government from time to time; Competent Impact Assessment Agency would then evaluate application and submit report; and if necessary, it is also empowered to constitute a Committee of Experts which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project; concealment of any factual data or submitting false or misleading information would make the application liable for rejection and would lead to cancellation of any EC already granted on that basis; EIA 1994 was superseded by EIA 2006; real distinction between EIA 1994 and EIA 2006 is that in the later EC must be granted by Regulatory Authority prior to commencement of any construction work or preparation of land; EIA 2006 divides all projects in Category A and Category B projects; under EIA 1994, PP was required to submit application along with all reports including EIA report but under EIA 2006 prior to preparation of EIA report by PP, the authority concerned would formulate comprehensive Terms of Reference (hereinafter referred to as ‘ToR’) on the basis of information furnished by PP addressing all relevant environmental concerns; this would form the basis for preparation of EIA Report; a pre-feasibility Report is also required to submit with the application unless exempted in the Notification; under EIA 1994, final approval was granted by Impact Assessment Authority but under Notification of 2006, final regulatory approval is granted by MoEF&CC or SEIAA, as the case may be; but approval is to be based on recommendations of EAC functioning in MoEF&CC or State Expert Appraisal Committees (SEACs) which are constituted for that specific purpose; thus the salient objective which underlies EIA 2006 is protection, preservation and continued sustenance of environment when the execution of new projects or the expansion or

modernization of existing projects is envisaged; it imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless 'Prior EC' has been granted by the authority concerned.

188. Supreme Court said that an application must be submitted prior to the commencement of any construction activity or preparation of the land at the site. The process to obtain EC comprised broadly 4 stages i.e. (i) Screening, (ii) Scoping, (iii) Public Consultation and (iv) Appraisal. The step of screening is restricted to Category B projects. It entails an examination of whether the proposed project or activity requires further environmental studies for preparation of an EIA for its appraisal prior to grant of EC. The projects requiring an EIA are further categorized as Category B1 projects and remaining projects are categorized as Category B2 projects. Category B2 projects do not require an EIA. The categorization is in accordance with the guidelines issued by MoEF&CC in this regard from time to time. The stage of scoping requires formulation of comprehensive ToR so as to address all relevant environmental concerns for the preparation of EIA. Amongst other things, information furnished by applicant in Form 1 and Form 1A along with the proposed ToR forms the basis for preparation of ToR. Public consultation at the third stage is attracted in all Category A and Category B1 projects. Summary of EIA is prepared in the format given in Appendix IIIA on the basis of ToR furnished to the applicant. This stage involves the process by which concerns of local affected persons and others who have plausible stake in the environmental impact of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate. The stage of appraisal involves detailed scrutiny by EAC or SEAC of all documents

submitted by applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which PP is also invited for furnishing clarification in person or through an authorized representative. The scheme requires Regulatory Authority to examine documents strictly with reference to ToR and if there is any inadequacy to communicate to EAC or SEAC within 30 days of receipt of the documents; recommendations made by EAC or SEAC are then required to be considered by MoEF&CC or concerned SEIAA who are supposed to communicate their decision to PP within 45 days of receipt of the recommendations. Ordinarily Regulatory Authorities are supposed to accept recommendations of EAC or SEAC. In case of disagreement, Regularity Authority is required to seek a reconsideration of recommendations by the concerned recommending body. Importance of provisions of EIA 2006 in reference to protection of environment has been stressed upon by Supreme Court in **para 56** of the report (**SCC**) as under:

*“The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. **The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula.** The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development.”*

189. Court also observed that under EIA 2006, process of obtaining an EC commences from the production of information stipulated in Form 1/Form 1A; crucial information regarding particulars of proposed project is sought to enable EAC or SEAC to prepare comprehensive ToR which

applicant is required to address during the course of preparation of EIA.

Relevant observations in para 60 of judgment are as under:

“60. Under the 2006 Notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A.

.....

.....

Some of the information sought is produced thus:

*60.1. **Construction, operation or decommissioning** of the project involving actions, which **will cause physical changes in the locality (topography, land use, changes in water bodies, etc.).***

*60.2. **Use of natural resources** for construction or operation of the project (such as land, **water**, materials or energy, especially any resources which are non- renewable or in short supply).*

60.3. Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health.

*60.4 **Production of solid wastes during construction, operation or decommissioning.***

60.5. Release of pollutants or any hazardous, toxic or noxious substances to air.

60.6. Generation of noise and vibration, and emissions of light and heat.

*60.7. **Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea.***

60.8. Risk of accidents during construction or operation of the project, which could affect human health or the environment.

*60.9. **Environment sensitivity which includes**, amongst other things, the furnishing of the following details:*

*60.9.1. **Areas protected under** international and **national legislation.***

*60.9.2. **Ecologically sensitive areas***

60.9.33 **Areas used by protected, important or sensitive species of flora or fauna.”**

(Emphasis added)

190. The importance of correctness and transparency of the information and that any false statement or concealment of the same would be fatal, was particularly stressed by Court in para 62 of judgment, observing:

*“62. The **information provided in Form 1 serves as a base upon which the process stipulated under the 2006 notification rests.** An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable persons concerned to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For this reason, **any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately.** Clause (vi) of paragraph 8 of the notification provides thus:*

“Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.”

(Emphasis added)

191. Supreme Court also referred and approved two judgments of this Tribunal in **Save Mon Region Federation vs. Union of India, 2013 (1) All India NGT Reporter 1** and **Shreeranganathan K P vs. Union of India 2014 SCC online NGT 15** wherein, on the basis of information furnished in Form 1, the deficiencies in EIA Report, process of appraisal etc., were considered in detail to find out whether EC was granted in accordance with law or not. Court distinguished an earlier judgment in

Lafarge Umiam Mining Private Limited vs. Union of India 2011 (7)

SCC 338 observing that it was the case under EIA 1994 when provisions of EIA 2006 were not applicable. Court said that decision was based on facts of that case, summarized by Court in ***Hanuman Laxman Aroskar (supra)*** in para 138 of judgment. It was also held that, relevant material, if has been excluded for consideration or extraneous circumstances were brought in mind, there was a failure to observe binding norms under EIA 2006 and consequential serious flaw in the decision-making process, would amount to an illegal exercise and failure of statutory duty, so as to vitiate EC. In para 157 of judgment, importance of the correct and complete disclosure of information by PP in his application, Form 1 and Form 1A, and further consideration by Competent Authority has been discussed, as under:

*“The 2006 Notification must hence be construed as a significant link in India’s quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. **The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.**”*

(Emphasis Added)

192. Further, in para 158 of the judgment, in ***Hanuman Laxman Aroskar (supra)***, Court observed:

*“Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the **need for a new airport** is paramount with an increasing volume of passengers and **consequently the flaws in the EIA process should be disregarded.** The need for setting up a new airport is a matter of*

*policy. The role of the decision-makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. **This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.***

(Emphasis Added)

193. Supreme Court ultimately held that report of EIA based on incomplete information supplied by PP is vitiated. In para 159, it is said:

*“In the present case, as our analysis has indicated, **there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs.***

(Emphasis Added)

194. Manner in which application submitted for grant of EC has to be dealt with by SEIAA or MoEF, has been considered in ***Bengaluru Development Authority v. Sudhakar Hegde & Ors.; (2020) 15 SCC 63***. Supreme Court had an appeal arising from NGT’s judgment dated 08.02.2019, whereby EC granted to appellant (BDA) for development of an eight lane Peripheral Ring Road connecting Tumkur Road to Hosur Road, a length of 65 kilometers was quashed, on the ground that report was based on primary data collected more than three years prior to submission to SEIAA. Tribunal directed that PP will not proceed on the basis of EC, which was quashed. Three issues were raised before Supreme Court. For our purpose, relevant question is, “whether EIA 2006 was followed or not”. In para 87 of judgment, Court said that

*“appraisal by SEAC is structured and defined by EIA Notification, 2006. At this stage, **SEAC is required to conduct “a detailed scrutiny” of the application and other documents including***

EIA report submitted by applicant for grant of an EC. Court also said that upon completion of appraisal processes, SEAC makes “categorical recommendations” to SEIAA either for grant of a ‘Prior EC’ on stipulated terms and conditions or rejection of the application. **The recommendations made by the SEAC for the grant of EC, are normally accepted by the SEIAA and must be based on “reasons”.**”

(Emphasis Added)

195. Court further said that reasons furnished by SEAC must be assessed with reference to the norm that it is required to submit reasons for its recommendations. Court found that SEAC, in that case, analyzed the matter perfunctory and fails to disclose reasons upon which it made recommendation to SEIAA for grant of EC. It merely proceeds on the reply submitted by PP. In para 89 of judgment, Court said:

“SEAC is under an obligation to record the specific reasons upon which it recommends the grant of an EC. The requirement that the SEAC must record reasons, besides being mandatory under the 2006 Notification, is of significance for two reasons: (i) The SEAC makes a recommendation to the SEIAA in terms of the 2006 Notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) of the 2006 Notification provides, shall normally accept the recommendations of the EAC. Thus, **the role of the SEAC in the grant of the EC for a proposed project is crucial;** and (ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. **The reasons furnished by the SEAC constitute the link upon which the SEIAA either grants or rejects the EC.** The reasons form the material which will be considered by the NGT when it considers a challenge to the grant of an EC”.

(Emphasis added)

196. Approving judgment of this Tribunal in **Shreeranganathan K P v Union of India; (2014) SCC Online NGT 15**, Supreme Court said:

“EAC had not conducted a proper appraisal given its failure to consider the available material and objections before it. The EAC had thus failed to conduct a proper evaluation of the project prior to forwarding to the regulatory authority its recommendation”.

(Emphasis added)

197. In para 92 of the judgment, Supreme Court said:

“SEAC, as an expert body, must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment and scrutinize the document submitted to it. The SEAC is duty bound to analyze the EIA report. The SEAC is not required to accept either the EIA report or any clarification sent to it by the project proponent. In the absence of cogent reasons by the SEAC for the recommendation of the grant of EC, the process by its very nature, together with the outcome, stands vitiated.”
(Emphasis added)

198. Reiterating on importance of protection of environment, Supreme Court said:

“protection of the environment is premised not only on the active role of Courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.”
(Emphasis added)

199. We may now refer to the information furnished by PP in the application, Form 1; (page 2139). Some informations, relevant for our purpose, disclosed by PP, are:

“
APPENDIX 1
(See Paragraph -6)
FORM 1

(I) Basic Information

Sl. No.	Item	Details
1.	Name of the project’s	Proposed Residential Building

		Project of M/s Wonder Projects Development Pvt. Ltd.
2.	Sr. No. in the schedule	8(a) Category B2 -Building and Construction project
3.	Proposed capacity/ area/ length/ tonnage to be handled/ command area/ lease area/ number of wells to be drilled	Total Plot area: 50,382.91 Sqm (12.45 Acres) Total Built-up Area: 1,28,193.9 Sqm
4.	New/ Expansion/Modernization	New Residential units
5.	Existing Capacity/ Area etc.	Plot area:50,382,91 Sqm (12.45 Acres)
6.	Category of Projects i.e. ‘A’ or ‘B’	Category B-Building and Construction project for BUA area >20,000 Sqm < 1, 50,000 Sqm.
9.	Location	Sy. Nos. 61/2, 62, 63/2 of Kasavanahalli Village, Varthur Hobli, Bengaluru East Taluk, Bengaluru. <u>Geological Coordinates</u> Latitude : 12°54’38.21”N Longitude: 77°40’08.52”E
22.	Forest land involved (hectares)	No forest land is involved

(II) Activity

1. Construction, operation or decommissioning of the Project involving actions, which will cause physical changes in the locality (**topography**, land use, **changes in water bodies**, etc.)

Sl. No.	Information/checklist confirmation	Yes /No	Details thereof (with approximate quantities/rates, wherever possible) with source of information on data
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)	Yes	The proposed project is being developed on a plot of land measuring about 50,382.91 Sqm. Presently the land is vacant & the proponent proposes to develop residential apartment. The contour plan has been enclosed as Drawings along with the EMP report.
1.2	Clearance of existing land, vegetation and buildings?	Yes	The proposed project site/land doesn't require any extensive clearance of vegetation. The existing trees will be retained in green belt development plan within the project site.
1.5	Construction works?	Yes	As per conceptual plan only.
1.7	Temporary sites used for construction works or Housing of construction workers?	Yes	Temporary sheds will be provided for storing of construction materials. Total 250 nos. of temporary sheds will be set up for construction workers with 35 toilets 60 urinals & 35 EWC & 35 bathrooms.

1.8	Above ground buildings, structures or Earthworks including linear structures, cut and fill or excavations.	Yes	Excavation work will be carried out for foundation of buildings and basements. The total excavated quantity of earth will be approx. 50,000 m³ for phase 1 and 85,000 m³ for phase 2.
1.14	Facilities for storage of goods or materials?	Yes	During construction phase the construction materials will be stored in the temporary sheds within the site. During operation phase, DG lube oil will be stored in a designated place and the diesel will be stored in a leak proof tank. Waste oil from DG sets will be stored in leak proof containers on impervious floors in a designated place within the site premises.
1.21	Impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers?	No	No such proposals of impoundment, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers shall be done at the project site.
1.22	Stream crossings?	Yes	A primary nala connecting to Kaikodrahalli lake is crossing across the project site. 50 m buffer on both side are provided as per the NGT specifications.
1.23	Abstraction or transfers of water from	No	Construction phase: Tertiary treated water will be used for curing and dust suppression during construction phase. Concreting and Domestic water requirements during construction shall be met by external authorized supplier. Operation phase: Water requirements will be met by BWSSB & treated water from STP of capacity 210 KLD and 280 KLD.
1.24	Changes in water bodies or the land surface affecting drainage or run-off?	Yes	Runoff will increase due to increased paved surface. Hence the runoff from the project site will be recharged to ground water aquifer by implementing well designed Rain water harvesting system.

2. Use of Natural resources for construction or operation of the Project (such as land, water, materials, or energy, especially any resources which are non-renewable or in short supply):

Sl. No.	Information/checklist confirmation	Yes/ No	Details thereof (with approximate quantities/rates, wherever possible) with source of information on data
2.1	Water (expected source & competing users) unit KLD	Yes	Construction phase: Approx: 150 KLD Source: Tanker/Treated water.

4. Production of solid wastes during construction or operation or decommissioning (MT/month)

Sl. No.	Information/ checklist confirmation	Yes/ No	Details thereof (with approximate quantities/ rates, wherever possible) with source of information on data
4.1	Soil, overburden or mine wastes	No	Excavated earth will be reused for backfilling and landscape development.
4.7	Construction or demolition wastes	Yes	Construction waste such as excavated Earth (soil & rock); 50,000 cum and 80,000 Cum generated for block 1 and block 2 out of which 14,900 Cum and 20,000 Cum will be used within the project site for backfilling for block 1 and block 2 respectively. Non-recyclable waste such as concrete waste, etc. will be used for road construction and all the recyclable wastes such as steel, other metal scrap, etc. will be sold to recyclers/scrap dealers.

(III) Environmental Sensitivity

Sl. No.	Information/checklist confirmation	Yes/ No	Details thereof (with approximate quantities/rates, wherever possible) with source of information on data
1	Areas protected under international conventions, national or local legislation for their ecological, landscape, cultural or other related value.	No	Not applicable
2	Areas which are important or sensitive for ecological reasons-Wetlands, watercourses or other	Yes	Kaikondrahalli lake exist at a distance of 75 m Harlur/”Kasavanahalli

	<i>water bodies, coastal zone, biospheres, mountains, forests.</i>		<i>Lake” at a distance of 0.800KM</i>
3	<i>Areas used by protected, important or sensitive species of flora or fauna for breeding, nesting, foraging, resting, over wintering, migration.</i>	<i>No</i>	<i>Not applicable</i>

”

200. Several information given, we find are either incorrect or incomplete and some information not given. However, we propose to deal his aspect in detail, after referring to documents of other authorities.

Development Plan:

201. The application submitted by PP for sanction of Development Plan in not on record. A copy of the map/DP is part of record on page 270 filed as annexure R-3 with reply of respondent-11 and 12. It was approved by BDA vide Resolution dated 09.11.2017. Residential Development Plan Work Order was issued on 07.03.2018. It shows total site area 51698.16 square meters, kharab area 1315.21 square meters and site area for development 50382.95 square meters. Gross built up area shown was 169000 squire meters. Further details of area, as per Zoning Regulation and Plan, are as under:

Sl. No.	Particulars	As per Zoning Regulation	As per Plan
1.	Park and Open Space	5038.29 square meters (10.00%)	5093.87 square meters (10.11%)
2.	Civic Amenities	2519.14 square meters (5%)	2540.66 square meters (5.04%)
3.	Site area (area considered for FAR)	—	47842.29 square meters (the area considered for FAR is site area for development-area for civic amenities
4.	Coverage	50%	<u>10842.17</u> 47842.29=22.66% < 50.00%
5.	No. of Floors	—	2BF+GF+20Upper Floor
6.	Setback	Front=16.00M Rear=16.00M	Front=16.00M Rear=58.54M

		Left=16.00M Right=16.00M	Left=16.00M Right=18.02M
7.	No. of Units	—	No. of units= 625 units EWS units = <u>63 units</u> (10.08%) Total units = 688 units
8.	Car Parking	723 Cars	313+445= 758 Cars

202. DP map shows that PP proposed two places as “Park and Open Spaces” as Part 1 and Part 2, comprising area 1687.15 square meters and 3406.72 square meters. Both are abutting “Kaikondarahalli Lake”. In effect, substantial area of ‘Buffer Zone’ of lake has been claimed by PP for merging/absorbing as development of Park and Open Space in the project. That too, abutting the lake. DP also shows a nalla/Kharab, 13 guntas, passing through the project land, almost in the middle of the two blocks, proposed to be constructed by PP. From the lake’s water periphery to actual construction boundary line of building block, PP has shown a distance of 75 meters but there is 8 meters wide Fire Drive Way which comes between the said area. Even the set back of building is within ‘Buffer Zone’. The built up area was not considered in the light of amended Item 8 of Schedule of EIA 2006 which covers service area of construction project.

203. ‘Buffer Zone’ of 25 meters and 50 meters has also been shown in DP map but without mentioning that in the vicinity of disputed project land, there existed other nallas whether primary, secondary or tertiary. The nalla wherefrom 25 meters buffer line has been shown, we find that in between there are structures like OWC, Gas Bank, Transformer Yard and entrance of the building so far as Block 1 is concerned. In respect of Block 2, set-back, Fire Drive Way Gas Bank and entrance are within ‘Buffer Zone’ of 25 meters.

204. Boundary line of the project is shown abutting the lake on North side, a Primary nalla in the middle of land, and also at a little distance from Secondary nalla, wherefrom 50 meters ‘Buffer Zone’ has been taken. Drive way and boundary wall itself is more than 25 meters away from Block 1 and near about 20 meters to Secondary nalla. Similar is the position in respect of Tertiary nalla viz-a-viz building of Block 2.

NOC from Fire Safety Department:

205. PP applied for grant of NOC for Phase 1 before Karnataka State Fire and Emergency Services i.e. KSFES in November, 2017. In the application, it proposed construction of high rise residential building i.e. Phase 1 with 3 towers i.e. tower A, B & C.

206. Tower A & C, each comprising of 2 common basements, common ground and 20 upper floors and tower B comprising of 2 common basements, common ground and 19 upper floors at Survey nos. 61/2, 62 and 63/2.

207. The site was inspected by Chief Fire Officer (hereinafter referred to as ‘CFO’), Bangalore East on 29.11.2017. He submitted report dated 04.12.2017/07.12.2017 to Director General of Police and Director General, KSFES. Relevant extract of his report is reproduced as under:-

“

Part-A General Building requirements			
Sl. No.	Details		General Requirements
2.	Number of Buildings	:	One Building i.e. Phase-1 with 3 Towers i.e. Tower-A, B, C – joined together
3	Number of Floors	:	<u>Tower-A & C</u> Each of 2 common Basements, common Ground floor & 20 upper floors <u>Tower-B</u> 2 common Basement, common Ground floor & 19

			upper floors.
5	Floor wise details of the occupancy:-		
	Tower-A, B & C Common Basement-2	:	For parking 131 cars, 1 pump room, 1 electrical room and 1 STP
	Common Basement-1	:	For parking 146 cars, 1 D.G Room and 1 electrical room
	Common Ground floor	:	For parking 120 cars, 1 electrical panel room, 1 communication room, 1 laundry & pool plant room and 3 fire command centre/panel room.
	Total	:	238 flats + 27 EWS flats=265 flats
7	Site Area As per Part 3 Development Control rules and General Building requirements clause 2.75 of NBC Site (Plot)- A parcel (piece) of land enclosed by definite boundaries	:	50,382.91m Sq. mtrs
9	Total Built-up area	:	59,091.85 Sq. mtrs.

”

208. CFO made following recommendations:

“From the above details it is clear that the Builder has incorporated all the Required fire prevention, fire fighting and evacuations measures in the drawings as per Part-II & IV of N.B.C. Hence herewith recommended to issue N.O.C. for High Rise Residential Building by M/s Wonder Projects Development Pvt. Ltd., with 3 Towers i.e. Tower-A, B & C-joined together at Sy. No. 61/2, 62& 63//2, Kasavanahali Village, Varthur Hobli, Bangalore East Taluk.”

209. Another application was filed by PP on 14.03.2018 for grant of NOC by Department of KSFES whereupon site was visited by CFO on 19.03.2018. He submitted report dated 21.03.2018. Therein, PP sought NOC for construction of high rise residential building i.e. Block-2 with 4 towers i.e. Tower A, B, C, & D. The relevant columns of the inspection report in column 3, 4, 6 and10:

Details of Fire prevention, firefighting & Evacuation measures to be furnished for issuing of NOC & CC etc; for the construction of High Rise Residential Buildings (Group A) Sub Division A-4			
Part-A General Building requirements			
Sl. No.	Details		General Requirements
3	Number of Buildings	:	One building i.e. Block-2 with 4 Towers i.e. Tower-A, B C & D joined together
4	Number of floors	:	<u>Tower-A</u> Common Basement, common ground floor common 1st floor & 2nd floor to 18th floor <u>Tower B, C & D</u> Each of common Basement, common Ground floor, common 1st floor & 2nd floor to 20th floor
6	Floor wise details of the occupancy		
	<u>Tower-A,B, C & D</u>	:	For parking 159 cars, 1 PHE Pump Room & Fire Pump Room.
	Common Ground floor	:	For parking 150 cars, 4 Fire Control Room & DG Room.
	Common 1 st floor	:	For parking 148 cars, 3 Electrical Panel Room, 1 Communication Room & Swimming Pool Plant Room.
	<u>Tower-A</u>		
	2 nd floor to 4 th floor	:	6 flats on each floor x 3 floors = 18 flats.
	5 th floor to 16 th floor	:	8 flats on each floor x 12 floors = 96 flats.
	17 th floor	:	7 flats out of which 2 flats are duplex type.
	18 th floor	:	Upper portion of duplex flats.
	<u>Tower-B</u>		
	2 nd floor to 18 th floor	:	4 flats on each floor x 17 floors = 68 flats.
	19 th floor	:	2 flats, out of which one flat is duplex type and Multipurpose Hall
	20 th floor	:	Upper portion of duplex flat, Maids Room & Terrace/refuge area.
	<u>Tower-C</u>		
	2 nd floor to 4 th floor	:	4 flats on each floor x 3 floors = 12 flats.
	5 th floor to 16 th floor	:	6 flats on each floor x 12 floors = 72 flats.
	17 th floor	:	6 flats.
	18 th floor	:	4 flats, Library, Café, Gym & Outdoor area.
	19 th floor	:	4 flat out of which 2 flats are duplex type, Aerobics/Dance, Yoga, Cards Area, Spa and Saloon
	20 th floor	:	Upper portion of duplex flats & Terrace/refuge area.
	<u>Tower-D</u>		
	2 nd floor to 18 th floor	:	4 flats on each floor x 17 floors =

			68 flats.
	19 th floor	:	3 flats, out of which one flat is duplex type and Squash Court (double height)
	20 th floor	:	Upper portion of duplex flat, Indoor Games & Terrace/refuge area.
		Total	: 360 flats
10	Total Built-up area	:	64,958.15 Sq. Mtrs

210. Thus in the two reports, CFO found,

- Total flats: 265+360=**625**
- Total built up area: 59091.85+64958.15=**124050** square meters
- Parking for cars: 397+547=**854**

211. Office of Director General of Police and Director General, KSFES sent letter dated 22.12.2017 in respect of NOC sought by PP for Block-1, Towers A, B, & C to Commissioner, BBMP informing that NOC is issued and a similar letter dated 20.04.2018 in respect of Block-2 was sent to Commissioner, BBMP.

NOC for water supply from BWSSB:

212. PP applied for NOC to respondent-9 (BWSSB) proposing construction of residential building comprising of Block 1 & 2, each Block comprised of 2 BF+GF+20UFs. Total site area disclosed was 51698.16 square meters and total built-up area as 171755.37 square meters. NOC was issued by Chief Engineer (M), BWSSB after having approval from Board on 23.08.2018. He mentioned area for which NOC was issued, as under:

*“The proposed residential building comprising Godrej HDIL consist of Block-I and II each block consists of 2 BF + GF + 20 Upper Floor. The sital area is 51698.16 smt. and with **total built-up area is 171755.37 Smt.** The premises comes under the jurisdiction of 110 villages of BBMP area.”*

Building Sanction Plan by BBMP:

213. Application dated 15.11.2017 was submitted by PP before BBMP for sanction of Building Plan. Application disclosed construction proposed at Khata No. 4131, Survey No. 61/2, 62 and 63/2, Kasavanhalli Village, Varthur Hobli, Bangalore East Taluk, Ward No. 150, Mahadevapura Zone, Bangalore. PP had applied for sanction of Block-1 only since in para 1 of the conditions of Building Plan Sanctioned Order dated 30.08.2018/31.08.2018; details of construction for which sanction was given are mentioned as under:

“1. Sanction is accorded for the Residential Apartment Building at Khata No. 4131, Sy No. 61/2, 62, 63/2, Kasavanhalli Village, Varthur Hobli, Bangalore East Taluk, Ward No. 150, Mahadevapura Zone, Bangalore.

*a) **Block-1** Consisting of 2BF+GF+19UF & 20 UF only.”*

214. Some of the conditions of sanction order are as under:

- “23. The applicant shall ensure that the Rain Water Harvesting Structures are provided & maintained in good repair for storage of water for non-potable purposes or recharge of ground water at all times having a minimum total capacity mentioned in the Bye-law 32(a).*
- 32. Sufficient two wheeler parking shall be provided as per requirement.*
- 41. All other **conditions laid down by Bangalore Development Authority while approving the Development Plan for the project should be strictly adhered to.***
- 42. All other **conditions and conditions** mentioned in the work order issued by the **Bangalore Development Authority vide No. BDA/TPM/DLP-41/2016-17/2161/2017-18 dated 07-03-2018** while approving the **development Plan for the project should be strictly adhered to.***
- 46. The **owner/Developer should obtain NOC from KSPCB** and submit the same within 30 days from the date of issue of License/Plan*
- 47. In case of any false information, misrepresentation of facts, or pending court cases, the plan sanction is deemed cancelled.”*

215. It is also evident from this document of BBMP that in support of his claim for the aforesaid sanction, PP relied on and submitted following documents received from other departments:

Sr. No.	Name of the Department	Date of the document and letter no.	Nature of the Document
i.	Airport Authority of India	20.10.2016 AAIKIA/ATM/NOC/8068-66	NOC in respect of height clearance
ii.	BSNL	26.12.2016 DE/SAN/BG/S-11/VOL XIII/20 @ BG-41	
iii.	Fire Force Department	22.12.2017 GBC(1)/336/2017	Clearance from Fire Department
iv.	SEIAA	10.01.2018 SEIAA 114 CON 2017	EC
v.	Hindustan Aeronautics Ltd.	11.01.2018 ASC/DGM(AO)/131/14-17/783/2017	
vi.	BESCOM	29.06.2017 & 31.01.2018 SEE/BSC/EE(O)/AEE-3/NOC-06/17-18/3520-22	

216. It is also mentioned in aforesaid NOC dated 30.10.2018 that PP paid Rs. 17,17,554/- vide receipt no. 65039 dated 12.10.2018 and Rs. 1,03,59,262/- towards Advance Probable Pro-rata charges vide receipt no. 65040 dated 12.10.2018. It further paid a sum of Rs. 98,25,610/- towards Beneficiary Capital Contribution/GBWASP Charges vide receipt No. 65041 dated 12.10.2018. There is a note at the end of the NOC and para 2 thereof says as under:

“The current NOC shall be only for residential property & the applicant shall obtain the revised NOC from BWSSB for any modification in the plan.”

Consent for Establishment by KSPCB:

217. PP submitted application dated 18.01.2020 before KSPCB for grant of Consent for Establishment (hereinafter referred to as ‘CFE’). In the

application he claimed that he proposes to construct residential apartment with 655 flats having built up area 128193.9 Square meters at Survey nos. 61/2, 62 and 63/2 Kasavanahalli village. The application was supported by a project report; BBMP khata certificate dated 20.10.2016 alongwith KE Form no. 1 for land measuring 12 acre 18 guntas; partition deed dated 21.08.2003; deed of absolute sale dated 23.07.2016 in favour of M/s. Wonder Projects Development Pvt. Ltd. and M/s. Godrej Properties Ltd.; land conversion order dated 31.03.2006; hydrological study report of proposed project site; STP feasibility report; analysis report of ambient air quality; ambient noise measurement; water quality and soil report on geo-technical investigations of proposed project site; BDA letter dated 23.09.2017 with regard to providing water and UGD stating that issue of NOC is withheld and to be considered on completion of work of project; NOC dated 21.09.2016 issued by Airport Authority of India with regard to height clearance; village map showing project location; EC dated 10.01.2018 issued by SEIAA, Karnataka; MoEF&CC approval of drawing of site plan of electrical lay out, upper basement electrical layout plan and sanctioned drawing of proposed project and resolution of authorization. The site was inspected on 05.02.2018 by Shri S. Dinesh, Environmental Officer, Bengaluru-Bomanahalli. He submitted report on 23.02.2018 (annexure R2 at page 473 in reply of KSPCB). Report shows that as per site plan, PP was to construct 655 flats and club house in 2 blocks; Block 1 comprised of 265 units and Block 2-390 units, having built up area 93423.70 Square meters; building configuration was 2BF+ GF+19UF+TF/20 floor; CFE was requested to construct residential apartment with 655 flats having built up area 128139.9 square meters; and that parking for 877 cars would be provided.

218. Location details are given in the inspection report as under:

“Location Details: As per the present status, the **project site is surrounded by “Kasavanahalli Lake”**, private properties & residences towards North, Residential lay out towards West, Vacant Land towards East, Residences & Private properties and Shriram Chirping Woods Apartment towards South direction. At the time of inspection, it was observed that the Project authorities have not started any construction work at the project site.

- **Water Body:** The nearest water body to the proposed project site is **“Kaikondarahalli Lake” & “Kasavanahalli Lake”**. The **“Kaikondarahalli Lake”** is located **adjacent to the proposed Project boundary towards north direction**. The project proponent have earmarked 75.67 tm ‘Buffer Zone’ from proposed building line (i.e. block 1 &2) to lake boundary, the area is **buffer area & is earmarked for parks/green belt**. The **“Kasavanahalli Lake”** is located at distance of about 393 m towards South respectively.
- **Stream/Nala/drain:** As per village map & KMZ survey sketch published in the survey of land records (BBMP limit) there is **stream/nala passing in the middle of proposed project site, which flows from “Kaikondarahalli Lake” to Kasvanahalli Lake**. At present the sewage is flowing in this stream. For this stream/nala, the P/A’s have earmarked 50 m ‘Buffer Zone’/distance from building line (i.e. Block 1 & 2) to edge of stream & the area is **buffer area is earmarked for parks/green belt**.
- As per village map, other two nala/drains are located towards South direction from proposed site; i.e., **one nala/drain is located in Sy. No. 61/1 of Kasavanahalli Village i.e., towards South West side & runs parallel to proposed site**. The **distance b/w the building line (i.e. Block 1) to the said nala is about 23 m** and to the **project boundary is 16 m**. The copy of survey sketch of proposed project site is enclosed along with report for your kind reference.
- The **second nala/drain is located in Sy. No. 57 of Kasavanahalli Village i.e., towards South East side & runs parallel to proposed site**. The **distance b/w the building line (i.e., block 2) to the said nala about 29 m** and to the **project boundary is 19.19 m**. Further, as per the survey sketch of Sy. No. 57 published in the land records, **the above said nala/drain area has been encroached by private layout**. The copy of the survey sketch of Sy. No. 57 is enclosed along with report for your kind reference.

- *However, as per CDP map (RMP -2015) there is no nala/stream/drain as mentioned above. CDP copy enclosed."*

219. Inspection report also said that PP has proposed to construct STP with the capacities of 210 KLD for block-1 and 220 KLD for block-2; design based on SBR technology. Inspecting authority mentioned in the report that STP proposed is designed for old sewage discharge standards, hence issue of CFE can be considered after receipt of revised STP design details for new sewage discharge standards. The relevant extract of inspection report reads as under:

*"The STPs has been designed for old sewage discharge standards. Hence, **issue of CFE can be considered after receipt of revised STP design details for new sewage discharge standards.**"*

220. Location of STP is mentioned in inspection report as under:

***"Location of STP:** P/As have proposed to provide STP of capacity 210 KLD towards South in block-1 building & STP of capacity 280 KLD towards West side block-2 building & the same has been specified in site plan."*

221. On Rain Water Harvesting System, report mention as under:

"Rain water harvesting system: The P/P has submitted rain water harvesting proposals. They have proposed to provide rainwater collection tank 46 cum in block-1 & 60 cum in block-2 and also recharge pits of 10 No's at strategic points along the project boundary."

222. Inspecting authority found that the site plan provided to KSPCB is distinct than the plan for which EC was granted by SEIAA and also details given in the application. He therefore, recommended that issue of CFE can be considered after receipt of revised site plan for built up area 128193.9 square meters. Para 3 of inspection report under heading "Other Specific Observations", reads as under:

*"The P/As have sought CFE to construct residential apartment with construct residential apartment with **655 flats & club house**"*

having BUA 1,28,193.9 sq.m, STP of capacities 210 KLD & 280 KLD and to install DG set of capacities 320 KVA x 1 No & 500 KVA x 1 No in block-1 and 380 KVA x 1 No, 500 KVA x 1 No in block 2. However, the site plan has been submitted for residential apartment with 655 flats & club house (block-1 - 265 units & block-2- 390 units) having BUA of 93423.70 sq.m. Hence, issue of CFE can be considered after receipt of revised site plan for BUA 1,28,193.9 sq. m along with signature.”

223. With respect to water bodies/drain and ‘Buffer Zone’, in para 6 of inspection report, under the heading “Other Specific Observation”, inspection report said:

6. As per NGT order dated: 04.05.2016, minimum 50 mt, 35 m & 25 m ‘Buffer Zone’ is to be maintained from Primary Rajakaluve, Secondary Rajakaluve & Tertiary Rajakaluve respectively. As per village map & KMZ survey sketch published in the survey of land records (BBMP limit) **there is stream/nala passing in the middle of proposed project site, which flows from “Kaikondarahalli Lake” to Kasvanahalli Lake.** At present the sewage is flowing in this stream. For this stream/nala, the P/A’s have earmarked **50 m ‘Buffer Zone’/distance from building line (i.e. block 1 & 2) to edge of stream** & the area is buffer area is earmarked for parks/green belt.
7. As per village map, **other two nala/drains are located towards South direction from proposed site; i.e., one nala/drain is located in Sy. No. 61/1 of Kasavanahalli Village i.e., towards South West side & runs parallel to proposed site.** The distance b/w the building line (i.e., block 1) to the said nala is about 23 m and to the project boundary is 16 m.
8. The **second nala/drain is located in Sy. No. 57 of Kasavanahalli Village i.e., towards South East side & runs parallel to proposed site. The distance b/w the building line (i.e., block 2) to the said nala about 29 m and to the project boundary is 19.19 m.** Further, as per the survey sketch of Sy. No. 57, published in the land records, **the above said nala/drain area has been encroached by private layout.”**

224. Report also noted excavation of soil, construction of model flat and levelling of earth which shows that construction was started even before grant of EC. The matter was considered by concerned Committee of KSPCB in the meeting dated 26.07.2018. After consideration, it

recommended to call PP for technical presentation before Chairman, KSPCB. PP made technical presentation on 24.08.2018 in the Head Office of KSPCB which was attended by officers of the Board. In the proceedings of technical presentation dated 28.08.2018, recorded by Chairman KSPCB, it was mentioned that Project Consultant showed that it is maintaining 'Buffer Zone' from lake, primary drain, tertiary drain and he heavily relied on EC dated 10.01.2018 granted by SEIAA, Karnataka. The relevant extracts of Technical presentation proceedings dated 28.08.2018, are as under:

“Dr. Shanth Thimmaiah, Project consultant has: delivered Technical presentation about their project and showing the village map & **proposed residential development plan approved by BDA** for maintaining the buffer of 75 meter from lakes to building line, 50 meter from primary nala and 25 meter from tertiary nala as the project comes in BBMP area. Also informed that they have obtained EC from SEIAA on 10.1.2018 for the proposed residential apartment having built up area of 1,28,193.90 sq.mtr consisting of 2 blocks with STP capacity of 210KLD& 280 KLD.

Further, during Technical presentation, the project authorities have submitted developing plan approved by BDA. In this drawing shows that between 2 Blocks North-East to South -East Kasavanahalli & Kaikondanahalli lakes. The project authorities have **left buffer of 50 meters from the edges of either side of nala to the building line** and further they have **left 75 meter buffer from Kaikondanahalli lake to building line**. Further on southern side there is a single line nala from east to south and they have left 25 meter from the edge of nala.

The project authorities have informed that they have obtained EC from SEIAA on 10.1.2018 and also submitted building drawing signed from BDA and **as per this drawing** they have left set back/ 'Buffer Zone' as per Hon'ble NGT orders. Also they have proposed to install 2 STPs of 210 KLD and 280 KLD in still parking area (floor).”

225. An affidavit was also filed by PP that they have complied all NGT guidelines and applicable norms, with further reference to EC dated 10.01.2018 issued by SEIAA, Karnataka and DP (Development Plan)

approved by BDA vide letter dated 07.03.2018. The short affidavit reads as under:

“This is to certify that M/s. Wonder Projects Development Private Limited are developing Residential Apartment Project with Total Built up Area (TUBA) of 1,28,193.90 Sq. Mtrs., at Sy. Nos. 61/2, 62 and 63/2 of Kasavanahalli Village, Varthur Hobli, Bangalore East Taluk, Bangalore.

We have already obtained Environmental Clearance from SE1AA-Karnataka vide their Letter No. SEIAA 114 CON 2017, Dated: 10.01.2018 and Development Plan was approved by Bangalore Development Authority (BDA) vide their Letter No. BDA/TPM/DLP-41/2016-17/2161/2017-18, Dated: 07.03.2018.

We would like to bring to your kind notice that we have complied with all the NGT Guidelines and applicable norms while developing this proposed residential project.”

226. Ultimately, KSPCB issued CFE on 12.10.2018 for construction of residential apartments with 655 flats and club house having total built up area of 1,28,193.9 square meters. Aforesaid CFE dated 12.10.2018 shows that concerned Committee recommended consent in its meeting dated 15.09.2018 and after approval by Member Secretary, Chairman, CFE was issued. One of the conditions in clause (viii) general sub-clause 6 of CFE dated 12.10.2018 reads as under:

“6.The applicant shall not change or alter (a) No. of flats (b) building plan (c) the quality, quantity or rate of discharge/emissions and (d) install/replace/alter the water or air pollution control measures without the prior approval of the Board.”

227. It also appears that an Infrastructure Cell of KSPCB reviewed the matter on 12.09.2018 before it being considered for grant of CFE and, therein, basically the Cell relied on technical presentation of PP, EC dated 10.01.2018 issued by SEIAA, Karnataka and DP (Development Plan)

approved by BDA. These proceedings are on record at page 508/509, and relevant extract reads as under:

“After technical presentation, the **Presiding officer directed the Board officers to process the CFE application** by placing the subject before the forth coming CCM for deliberations on issue of CFE.

Whereas, once again the **subject is placed in the Consent Committee Meeting held on 06.09.2018** and the committee after detailed deliberations, **recommended to defer the subject for want of further clarification**. Based on the proceedings, **the project authorities have submitted the clarification**.

Recommendations of Infrastructure Cell:

Based on the above, the review subject is placed before the CCM for deliberation & decision for disposal of CFE application.”

228. The above discussions show that the land of disputed project was recorded in Revenue Records as an agricultural land till March 2006. The erstwhile owner applied for conversion of nature of land from agriculture to non-agriculture which was allowed by three separate orders dated 31.03.2006, permitting change of use from agriculture to non-agriculture of 3 acres 2 guntas land in Survey no. 62; 3 acres 5 guntas in Survey no. 61/2 and 6 acres 21 guntas in Survey no. 63/2. PP i.e. R-11 and 12 purchased land vide sale deed dated 23.07.2016. Since the land purchased by PP was in separate Revenue *khatas*, on their application, amalgamation of 3 Survey nos. was allowed by Competent Authority vide order dated 20.10.2016. The first No Objection Certificate (hereinafter referred to as ‘NOC’) was received by PP from Air Port Authority of India who granted permission vide letter dated 21.09.2016 whereby height clearance of permissible top elevation above sea level was restricted to 938.73 meters. Another NOC was issued by Bharat Sanchar Nigam Limited by order dated 26.12.2016.

229. In RMP-2015, entire area where land in dispute situated was shown in the category of “Industrial (Hi-Tech) Zone”. PP applied for change of user and State of Karnataka allowed it by order dated 24.10.2017. Consequential Order was issued by BDA on 08.12.2017. Neither SEIAA, Karnataka nor KSPCB made any attempt to find out how PP could commence construction before grant of EC or Consent to establish and also failed to examine built up area disclosed differently in DP rendering application cognizable by MoEF&CC.

230. The **first question** has been argued by learned counsel for appellant/applicant on **two aspects**. First, that built up area was not correctly disclosed by PP and deliberately has been shown lesser so as to avoid deeper scrutiny for grant of EC by MoEF&CC. The project was in Category A, having built up area of more than 150000 square meters, but playing fraud and also misrepresentation, PP had shown as less than 150000 square meters in application, Form 1 and 1A. **Second aspect is**, that the relevant informations with regard to ecology, environment, surrounding area, wetlands, drains etc. were not given correctly and, therefore, application for EC was liable to be rejected.

231. Proceeding to consider the aspect about built up area disclosed by PP for grant of impugned EC dated 10.01.2018, we find that copy of application for EC dated 14.10.2017 submitted to SEIAA, Karnataka by PP is annexed as annexure A4 at page 58 in Appeal No. 54/2018. Relevant aspects of this application, we have already noted.

232. It is evident therefrom that PP disclosed total plot area as 50382.91 square meters i.e. 12.45 acres, total built up area as 128193.9 square meters and B-2 category. In Appendix 1, Form 1 Clause (I), Basic Information, Sl. No. 6 “Category of Project i.e. ‘A’ or ‘B’”, PP has mentioned

the project “Category B-Building” and construction of project for built up area more than 20000 square meters and less than 150000 square meters”.

Kharab Land:

233. KSPCB enquired from the Office of Assistant Director, Land Records, Bengaluru about kharab land. Vide letter dated 06.03.2018, it provided measurements of Storm Water flow area in kharab out of Survey no. 63.

234. BBMP vide letter dated 07.03.2020 informed KSPCB that its officials inspected site on 02.03.2020 where construction of Multi-storied Residential Apartment Complex was being carried out in Survey no. 61, 62 and 63. The spot was verified, referring to village map (Kasavanahalli). As per village map, two streams that originated from “Kasavanahalli Lake” and flow towards “Kaikondarahalli Lake” via Survey no. 63, one stream flows inside Survey nos. 51, 57 and 63 and another stream flows in Survey nos. 31, 47, 48, 46, 58 and 59, joins in Survey no. 57 and flows in Survey No. 63. These streams flow in kharab area of respective survey numbers. Since two streams joins together in Survey no. 57 and flow in Survey no. 63, the said drain in Survey no. 63 is to be considered as “Secondary drain”. It was also pointed out that a single line drain was spotted, called “Agricultural drain” or “Feeder Channel” in Survey no. 56 and 57 adjacent to Survey no. 63. The said drain ends on “Secondary drain”. Since single line drain terminates, at “Secondary drain” is a Pillu Kaluve or a lead of drain for which buffer is not applicable. Further, one more single line drain is spotted in Survey no. 61, 43, 35 and 37. Since these single line drain runs in various Survey

numbers, the same is treated as “Tertiary drain”. Report dated 07.03.2020 given by officials as available on record, reads as under:

*“The said spot was verified with respect to the RMP-2015. **According to RMP-2015 some portion of the eastern part of survey no. 61 & 62 is marked as valley zone.** On verification at spot the drain as marked in RMP-2015 is not constructed, however **the area earmarked for the valley is kept as non-construction zone.** The width of the valley Zone as per RMP-2015 considering the highest width is 53.05 mtrs. On verification, the buffer left at the spot from the building line to the centre of valley zone is $(53.05/2)+8.16=34.66$ mtrs which is above the prescribed buffer for secondary drain (25.00 mtrs).*

The said area was verified with the plan sanctioned by Bruhat Bengaluru Mahanagara Palike. As informed in the above paragraph the nala in survey no. 63 is considered to be a Secondary drain. However, the building line of each of the towers is more than 50.00 mtrs away from the edge of the nala.

Further, single line drain called the Agriculture drain or Feeder Canals exists in survey no.56 and 57 adjacent to survey no. 63 and this drain ends on the Secondary drain and thus this drain is treated as lead-off drain for which buffer is not applicable. One more drain is running in survey no. 61, 43, 35 and 37. Since, these drains are running in various survey numbers, the same is treated as Tertiary drain and on verification in the sanctioned plan issued by Bruhat Bengaluru Mahanagara Palike it is observed that 25.00 mtrs of Buffer is maintained from the Building line.

Therefore, it is found that there is no violation of the Buffer area by M/s Wonder Projects (P) Ltd. and M/s Godrej Properties Ltd. pertaining to storm water drains in the premises under question.

As informed in the earlier letter dated:19.12.2019 the M/s Wonder Projects (P) Ltd. and M/s Godrej Properties Ltd. have obtained permission for construction of Storm water drain on Self Financing/Self Execution vide CE(SWD)/PR/140/17-18, dated 02.08.2017 by the Chief Engineer (SWD), and the construction is as per the approved drawings.”

235. PP did mention that total plot area was 51718.83 square meters whereof 1335.92 square meters was ‘kharab’ land which could not have been used for any purpose by PP. Hence available area of land for project

was 50382.91 square meters. This fact, we find mentioned in the inspection report dated 23.02.2018 submitted by Environmental Officer of KSPCB. PP knew that no construction was permissible on kharab still sought permission from BBMP, started to construct RCC Drain box and did not disclose this fact in application for EC.

236. The date of submission of DP for sanction before BDA is not on record but approved map i.e. DP which is on record as annexure R-3 at page 270, to reply submitted by PP (respondents-11 and 12) in Appeal No. 54/2018. It shows that BDA vide Resolution No. 128/2017 dated 09.11.2017 approved DP. The aforesaid DP shows details therein with regard to “built up area” as under:

	Gross area	Deduction for shafts/ cutouts	Built up area	FAR Deductions	Net FAR	No. of units
Block-1	69222.22	7447.45	61774.77	15348.15	46426.62	265+27 EWS =292
Block-2	100735.15	35360.67	65374.48	17095.74	48278.74	360+36 EWS =396
Total of Block-1 and Block-2	169957.37	42808.12	127149.25	32443.89	94705.36	625+63= 688

237. DP map also shows a Primary nala passing through the project land and shown as ‘kharab’.

238. Further, the fact that DP was sanctioned/approved by BDA’s Committee by Resolution dated 09.11.2017 means that application and plan must have been submitted to BDA at an earlier point of time i.e. almost simultaneous or may be a little before when application for grant of EC was submitted on 14.10.2017 yet PP gave different built area.

Apparently it was to avoid deeper scrutiny applicable to projects in category A.

Permission for Construction of RCC drain and RCC Culvert:

239. The mischief in respect of SWD flowing from one lake to another and land being kharab is further evident from fact that even before change of land use by Karnataka Govt. vide order dated 24.10.2017, PP submitted an application/letter dated 13.06.2017 to BBMP requesting to permit construction of RCC drain and RCC Culvert in Survey no. 63/2 at its own cost. The work was to be carried out by M/s. Agamya Engineering Services LLP. Commissioner, BBMP granted approval to the said request on 26.07.2017. It was communicated to PP by Chief Engineer, BBMP's letter dated 02.08.2017. Letter reads as under:

“With reference to the above subject and in the letter under reference, permission sought for the construction of **R.C.C. Drain and R.C.C. box type Culvert for storm water drain flowing in Survey No. 63/2**, Kasavanahalli Village, Varthur Hobli, B.B.M.P. Limits BANGALORE East Taluq- request made by M/s Agamya Engineering Services LLP, to construct at their own cost, R.C.C. ‘U’ type drain measuring 5.40M x 3.0M and two culverts of 12 Meters R.C.C. Block type, as **per the approval and Order by the Hon’ble Commissioner, permission given subject to conditions as below:**

1. R.C.C. ‘U’ type drain measuring and two culverts of 12 Meters R.C.C. Block type, to be constructed without changing for any reason Alignment of present storm water drain and original measures, for any reason whatsoever.
2. Spot where said canal runs being the property of the PALIKE, Owner of the property has no right, whatsoever in it.
3. Construction of R.C.C. ‘U’ type drain to be done after taking Guidance; from the Engineer concerned of the PALIKE.
4. After completion of the works no building to be constructed on the top/terrace or by the side of R.C.C. ‘U’ Type drain and R.C.C. Box Culverts.

5. Name plate of/as/B.B.M.P. to be exhibited on the said RCC U Type drain and R.C.C. Box Culverts.
6. Instructed to clean the same periodically for free flow of rain water.
7. Palike Officers/Staff reserve the right to conduct spot inspection at any time, also to take appropriate action, they should not be obstructed for doing this.
8. Applicant has to bear the entire expenses for the construction of and repairs and maintenance thereafter.
9. Precautions to be taken at the time of construction, if any type of accident occurs, Applicant will be directly responsible for the same. No financial expenditure or relief for the loss/indemnity will be borne by the Palike.
10. PALIKE reserves the right to cancel the permission, without giving any reason, at any time, in this regard Applicant cannot exercise any right.
11. After construction of the said RCC U type drain, it should not be used for any purpose other than flow of storm water/rain water.
12. If any occasion arises, to make any type of change during the execution of the works, prior permission of the MAHANAGARA PALIKE has to be obtained.
13. Construction of the RCC U type drain and R.C.C. Box Culverts to be done as per the plan and design/sketch approved by the MAHANAGARA PALIKE.”

240. On enquiry made by Shri Kaushlesh Pratap Singh, Regional Officer and Chairman of Joint Committee and Representative of MoEF&CC, vide letter dated 08.03.2021, Additional Director, Town Planning, BBMP, informed vide letter dated 09.03.2021 that permission for construction of RCC drain was given by Commissioner, BBMP in exercise of power under Section 288A of KMC Act, 1976. Further permission for construction of RCC Culvert was given by Commissioner exercising power under Section 288 (1) (c) of KMC Act, 1976. Both these provisions read as under:

“288A. Prohibition of structures or fixtures which cause obstruction in public streets.- No person shall except with the written permission of the Commissioner under Section 288 **erect or set up any wall**, fence, rail, post, step, booth or other structures or fixtures **in or upon any public street or upon or over any open channel, well or tank in any street so as to form an obstruction to, or an encroachment upon or a projection over,** or to occupy any portion of such street, channel, drain, well or tank.”

“288. Power to allow certain projections an erections.- (1) The Commissioner may grant a licence subject to such conditions and restrictions as he may think fit to the owner or occupier of any premises.- (c) **to construct any step or drain-covering necessary for access to the premises.”**

241. Having gone through the aforesaid provisions, we find that the said provisions did not empower Commissioner to grant any such permission. These provisions are referred illegally and Commissioner has claimed power therein by sheer misconstruction of these provisions. He exercised power which never vested in him. It is apparently for reasons other than *bonafide*.

242. We called upon the counsel for the respondents including that of PP to show as to how these provisions empower Commissioner to grant permission of RCC drain and RCC Culvert on *kharab* land and that too for checking the storm water drain to which Shri Pinaki Misra, counsel for PP said that it is for BBMP and its authority to explain but so far as PP is concerned, he has proceeded only when an order by statutory authority was communicated to it. Even Counsel for BBMP could not explain.

243. Section 288A prohibits any structures or fixtures in public streets or upon or over any open channel in well or tank in any street. It has nothing to do with any construction in a kharab land in respect of Storm Water Drain flowing water from one lake to another when it is passing through or over kharab land.

244. Similarly, Section 288 is not applicable for construction of any “Storm Water Drain” but for step or covering necessary for access to the premises. Therefore, Section 288 (1) and in particular clause (c) is not applicable at all. It does not appear that Commissioner, BBMP examined aforesaid provisions before passing order of approval for construction of RCC drain and RCC Culvert on kharab land in Survey no. 63/2 which communicated to PP by Chief Engineer’s letter dated 08.03.2021. This approval/permission is a nullity in the eyes of law, wholly without jurisdiction and would not give any validity to the action of PP for the aforesaid construction.

245. Further, difference in plot area as well as built up area, and, number of units in the information given in DP and application for grant of EC when questioned, learned counsel appearing for PP could not explain; except that sometimes Designer and Architect of the project makes improvement in the plan. We find it improbable and devoid of any trace of truth since documents were submitted in two departments almost simultaneously, then how there could be change in the two documents and why immediate consistency in information in both the plans was not attempted. It appears that PP gave information as suited to it, to different authorities differently. This is further fortified from some more documents.

246. Another application was submitted just after a short time i.e. on 15.11.2017. It is the “Building Plan” submitted for sanction to BBMP. Sanction was accorded on 20.08.2018. Letter was issued by BBMP to PP on 30.08.2018. PP himself has filed it as annexure 2 at page 436 (English Translation on page 437 to the affidavit dated 05.02.2019 filed on 07.02.2019). Page 438 shows that sanction was granted only for Block-1 consisting of 2BF+GF+19UF and part 20UF. The document does not show particulars of “built up area” either disclosed by PP or sanctioned by BBMP for Block-1.

247. Then comes documents relating to KSFES. There, PP has submitted separate applications for Block-1 and Block-2. For Block-1, application is dated 07.11.2017. Complete application itself is not on record. In respect of Block-1, copy of bare application without its enclosures is annexure R-1 at page 518 to reply submitted by respondent-7 (KSFES). Therefore, what area was disclosed by PP in the application is not available. However, inspection report dated 04/07.12.2017 of CFO is on record. The said report shows that total units proposed to be constructed in Block-1 were 238+27 i.e. 265 flats which comprised of 3 towers A, B and C. Parking in common basements- 1 and 2 and common ground floor was for 391 cars. CFO computed ‘built up area’ of each floor with reference to the units. He has shown, in column 9 at page 524, to the total ‘built up area’ as 59091.85 square meters.

248. In respect of Block-2, application was submitted by PP on 07.03.2018 which is on page 570 i.e. annexure R-3 to the reply of respondent-7 (KSFES). Here also complete document i.e. enclosures to application is not on record. Therefore, details disclosed by PP cannot be

discerned therefrom. Here also inspection report of CFO dated 21.03.2018 (annexure R-4 at page 572 to reply of respondent-7) is on record. Therein, CFO has found that Block-2 comprised of 4 towers i.e. A, B, C and D. Arrangement for car parking was in common basement, common ground floor and common first floor and shown for 159, 150 and 148 cars i.e. total 457 cars. Similarly, CFO has noted number of flats as 360, in column 6 of report at page 573, and total 'built up area' in column 10 at page 575 is given as 64958.15 square meters.

249. From the two reports of CFO, which are on record along with reply of respondent-7, total built up area of 7 towers in two blocks, comes to $59091.85 + 64958.15 = 124050$ square meters. Total units i.e. flats comes to 625 and arrangement of parking for total 848 cars. If built up area of towers part with only 625 units was 124050 square meters, then for 688 units and other services total area would have been much higher i.e. 169000 and more square meters as shown in DP.

250. Thus it is evident that above figures do not tally with the information contained in sanctioned DP which talks of 688 units of residential apartments and arrangements for 313 parking of cars in Block-1 and 455 in Block-2 i.e. total of 758 cars. Gross built up area given in DP is 169957.37 square meters.

251. Be that as it may, the fact remains that information recorded by CFO also does not tally with the information, PP has furnished in application in Form 1 and Form 1A to SEIAA, Karnataka for grant of EC.

252. Moreover, CFO made inspection and report refers to only 7 towers of two blocks sought to be constructed and not total construction to be made by PP on the project site. Therefore, actual built up area obviously

would much higher than what was mentioned in two inspection reports of CFO.

253. Again another built up area we find in the documents of BWSSB. The application submitted to BWSSB is dated 15.06.2018 but therein, site area shown is 51698.16 square meters and built up area is shown as 171755.37 square meters. The above facts are evident from annexure-3 to the affidavit dated 05.02.2019 (for placing additional documents) filed by PP on 07.02.2019 which starts from page 426 and NOC is on page 442. The relevant extract of the said NOC has already been quoted above.

254. Lastly, we find application submitted for grant of 'Consent for Establishment' which is said to have been filed on 18.01.2018 in Regional Office, KSPCB. This application is not on record but inspection report dated 23.02.2018 is on record as annexure R-2 at page 473 to reply of respondent-6 (KSPCB). Therein, we find that Environmental Officer, Bengaluru himself has not made any attempt to find out details of site area, built up area etc. Instead he has proceeded on the information given by PP that is why, in the column of project details, he has mentioned that as per site plan, project relates to residential apartment with 655 flats and club house i.e. 265 units in Block-1 and 390 units in Block-2 having 'built up area' of 93423.70 square meters. Then, he has mentioned about number of parking of cars as 877. Other details given are:

- i.) Total site area-51718.83 square meters;
- ii.) Kharab land area-1335.92 square meters;
- iii.) Ground coverage area-12147.75 square meters;
- iv.) Landscape area-21667.7 square meters;
- v.) Civic amenities-2524.18 square meters;

- vi.) Parks and Open Spaces-4833.73 square meters and
- vii.) Area left for other utilities-9209.55 square meters.

255. Environmental Officer has taken built up area and number of units from site plan. But here also, we find that Environmental Officer has taken built up area only as 93423.70 square meters. We don't find as to where from this area has been taken for the reasons that even in DP, net FAR area has been mentioned as 94705.36 square meters but Environmental Officer has mentioned lesser area than that.

256. Further, when we go by the entire FAR and non-FAR i.e. gross built up area as per DP and from NOC issued by BWSSB; it is evident that total built up area therein is more than 1,50,000 square meters.

257. Learned counsel for PP though endeavored to resist but could not dispute that for the purpose of EC, there is no difference between FAR and non-FAR area and entire "built up area" in accordance with Item 8 Schedule of EC 2006 as amended has to be taken into consideration to determine the category of project and the Competent Authority for grant of EC whether would be SEIAA or MoEF&CC.

258. The issue of FAR and non-Far in environmental matters has already been settled by Apex Court in **Goel Ganga Developers India Private Limited (supra)**. Therein Appeal was taken to Supreme Court from judgment of Tribunal in **OA No. 184/2015 (WZ), Tanaji Balasaheb Gambhire Vs. Union of India** decided on 27.09.2016. PP-M/s. Goel Ganga Developers India Private Limited raised construction in violation of Environmental Clearance, Municipal laws and Environmental laws. Complainant/applicant-Tanaji Balasaheb Gambhire prayed that illegal construction should be demolished. Applicant therein, succeeded and Tribunal vide judgment dated 27.09.2016 allowed OA No. 184/2015 and

directed that M/s. Goel Ganga Developers India Private Limited shall pay environmental compensation of Rs. 100 crores or 5% of the total cost of project to be assessed by SEAC, whichever is less, for restoration and restitution of environment damage and degradation caused by it, by carrying out construction activities without necessary prior EC. Further, PP was saddled with the penalty of Rs. 5 crores for contravening mandatory provisions of environmental laws in carrying out construction activities, exceeding limit of EC. Tribunal also imposed fine of Rs. 5 Lakh upon officers of Pune Municipal Corporation and directed Commissioner to take appropriate action against erring officers. Chief Secretary of State of Maharashtra was directed to take notice of conduct of the officers who misled Department of Environment in regard to interpretation of FSI and built up area.

259. PP-M/s. Goel Ganga Developers India Private Limited filed Civil Appeal No. 10854 of 2016. Another Civil Appeal No. 10901 of 2016 was filed by Pune Municipal Corporation. In the meantime, PP had also filed Review Application No. 35/2016 before Tribunal which was rejected on 08.01.2018, hence he sought amendment in the appeal before Supreme Court which was allowed. A third Appeal being Diary No. 3911 of 2018 was filed by Applicant-Tanaji Balasaheb Gambhire challenging Tribunal's judgment dated 27.09.2016 and order dated 08.01.2018 passed on Review Application, since relief for demolition of illegal structure was not granted. He also wanted enhancement of environmental compensation. The total plot area was 79,100 square meters but PP claimed built up area as 57658.42 square meters comprising of 12 buildings with stilt, basement+11 floors for 552 flats, 50 shops and 34 offices. PP therein contended that "built up area" is synonymous with "Floor Space Index" or "FSI". It said that constructed area which is exempted area or is not an

FSI, was not a part of built up area. *Per-contra*, on behalf of MoEF&CC, Additional Solicitor General argued that 'built up area' will cover all constructed area and concept of FSI and non-FSI area is alien to environmental laws. Reliance was placed by PP on Rule 2.13 of Development Control Rules for Pune Municipal Corporation, 1982 wherein 'built up area' was defined as 'area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule no. 15.4.2'. The term "Floor Area Ratio" (FAR) was defined in Rule 2.39 stating that the quotient obtained by dividing total covered area (plinth area) on all floors excluding exempted areas as given in Rule 15.4.2 by the area of the plot. A note appended to Rule 2.39 said that FAR is synonymous with FSI. Then in Rule 15.4.2, certain areas were described which would not be included in covered area or FAR and built up area. These exempted area included basement or cellar space under a building constructed on stilts and used as parking space; air-conditioning plant rooms used as accessory to the principal use; electric cabin or sub-station; watchman's booth; pump house; garage shaft, space required for location of fire hydrants, electric fittings and water tanks; projections as specifically exempted under these rules; stair case room and/or lift rooms above the top most storey, architectural features, chimneys, elevated tanks of dimensions as permissible under rules etc. On behalf of MoEF&CC and applicant-Tanaji Balasaheb Gambhire, reliance was placed on EIA 2006 stating that for the purpose of EC, it is EIA 2006 which will be relevant and not Rules of Local body like Municipal Corporation. Accepting the stand taken by MoEF&CC and applicant, Supreme Court said:

*"the **concept of FSI or non-FSI has no concern or connection with grant of EC.** The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be*

*granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. **While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment.** Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. **Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006.***

(Emphasis added)

260. Thereafter, Supreme Court also referred to the Notification dated 04.04.2011, whereby column 5 of Item 8(a) was substituted which we have already mentioned above. Here substituted provision defines built up area as “the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects”. Referring to this notification dated 04.04.2011, Supreme Court said this notification clearly defines ‘built up area’ as all constructed area including basement and service areas without any exception. On behalf of PP, reliance was placed on Office Memorandum dated 07.07.2017 issued by Dr. Ashish Kumar, Joint Director, MoEF&CC purporting to be a clarification of amendment notification dated 04.04.2011 stating that this amendment may be prospective but deprecating this Office Memorandum, Supreme Court said that EIA 2006 is a statutory notification issued in terms of Rule 5(3) of EP Rules, 1986 and similar is the position with respect to notification dated 04.04.2011. Such statutory notifications could not have been

narrowed or settled down by Office Memorandum or a letter issued by Joint Director without following procedure in which notifications dated 14.09.2006 and 04.04.2011 were issued, Hence deprecating the same, in para 22 of the judgment, Supreme Court in para 23 quashed the said Office Memorandum.

261. Thus, in the above facts, we are clear in our mind that in the present case, firstly, PP has given different information to different authorities in regard of 'built up area' and thereby has tinkered with the competence of the authority who would have considered issue of grant of EC in this case. From two documents it is clear that built up area was more than 150000 square meters i.e. sanctioned DP issued by BDA and NOC issued by BWSSB. Further in the documents filed before Fire Department and also in the EC application, PP has referred to only "built up area" in terms of net-FAR as per laws of local bodies and did not comply with requirement of item 8 of EIA 2006 as amended by notification dated 04.04.2011 and thereafter. Since PP himself has disclosed built up area of more than 150000 square meters before BDA for sanction of DP which was the first document which it submitted before a statutory authority and then before BWSSB, it is clear that PP mentioned not only wrong facts with regard to 'built up area' before SEIAA while submitting application in Form 1 and Form 1A but also reduced area so as to result in change of Competent Authority for grant of EC in as much as where built up area is more than 150000 square meters, Competent Authority to grant EC is MoEF&CC and procedure is also different. Therefore, the **First aspect of question 1** is returned against PP. Authority i.e. SEIAA Karnataka, in this case was not competent to grant EC.

262. Now, we come to **second aspect** i.e. non-disclosure of correct information/concealment of other relevant facts in the application submitted by PP for grant of EC. In this regard, information relating to proximity of project site with wetland and wetland area, *flora-fauna* and vegetation in the attending and abutting area, position of Rajakaluves/drains etc. is relevant.

263. In the additional affidavit dated 19.11.2019, applicant has given details of various ecologically and otherwise sensitive areas, near the project site and the distance thereof as under:

Sl. No.	Area	Distance (in km)
1	Kasavanahalli Lake	0.4 km
2	Ambalipura Lake	0.65 km
3	Ibbalur Forest Area	0.8 km
4	Bellandur Lake	2.00 km
5	Dodakannali Lake	2.46 km
6	Hosa Lake	2.73 km
7	Agara Lake	3 km
8	Varthur Lake	7.12 km

264. It is also said in para 14 on page 720 that Ibbalur Forest Area is being used as a firing range by military camp and owned by Ministry of Defence, Government of India. It is just 800 meters away from the boundary from the project site. All this information ought to have been disclosed by PP in view of requirement of para 8(vi), which he failed.

265. In respect to the above facts stated by appellant/applicant, we do not find anything on record to show any incorrect statement and incorrect facts stated in Additional Affidavit and, therefore, these facts remain uncontroverted.

266. After the judgment was reserved, PP has filed two applications along with certain additional documents. Normally after reserving judgment, no such application ought to have been entertained but to do compete justice in the matter we have examined those documents also. In the first application filed, an order passed by Real Estate Regulatory Authority rejecting complaint made against PP in respect to the project in dispute has been filed. And by another application which has been filed on 26.07.2021, PP has filed certain Google maps of different period of the years-1874, 1904, 2002, 2005, 2010, 2015, 2020 and 2021. So far as Real Estate Regulatory Authority proceedings are concerned, the same have no relevance for our purpose and so far as the maps are concerned, the same demonstrate and fortify the fact that the project site is abutting “Kaikondarahalli Lake” and upto the periphery, we find leveling of excavated soil which clearly damming and raising the ground level upto periphery of lake.

267. It is not disputed before us, by the parties, that two lakes namely “Kaikondarahalli Lake” and “Kasavanahalli Lake” are though not notified under Wetland Rules, 2010 and 2017 since procedure of notification has not been completed till date but both are mentioned in National Wetland Inventory Assessment and among 201503 wetlands identified in respect whereof Supreme Court in ***M.K. Balakrishnan and Ors. v. Union of India and Ors. (supra)*** has said that Rule 4 of Rules 2010 will apply. Therefore, it is not in dispute that the restrictions contained in Rule 4 of Rules 2010 which are substituted later by Rules 2017, shall apply to both the lakes.

Flora and Fauna:

268. Appellant/applicant-H.P. Ranjana has filled an additional affidavit dated 19.11.2019 stating that PP has concealed information regarding presence of ecologically sensitive Acacia forest, sensitive species of flora and fauna in the proximity of project land as also non-disclosure of water bodies and forest within 15 kms from the project site. In this regard, it is stated that as per survey conducted by a volunteer-led non-Government Organization-Mahadevpura Parisara Samrakshane Mattu Abhivrudhi Samiti and the United Way of Bengaluru in regard of ongoing flora and fauna at “Kaikondarahalli Lake”, it has been found that around 43 species of birds, 26 species of reptiles and 3,000 plants comprising at least 33 varieties are present in that area. Survey was conducted sometimes in October, 2013. Some of the birds spotted were White-browed Wagtail, Greater Coucal, Red-wattled Lapwing, Pied Kingfisher. Exotic flora spotted include ‘Jali Maa’, Nerale Hannu’, Singapore Cherry, Pink Lapacho and Wild Date Palm. A Google earth image showing Acacia trees within the lake area and project land abutting lake, has also been annexed as annexure A3 to the aforesaid affidavit. We find nothing on record submitted by PP to contradict the above facts stated in the said affidavit.

269. With regard to the topography and presence of wetland and storm water drains/Rajakaluves and surrounding areas, we find information in the following documents:

- (a) According to DP, sanctioned by BDA, the project land has total area of 51698.16 square meters which included Kharab area 1315.21 square meters and site area available for development to PP was (51698.16-1315.21) 50382.95 square meters, and is

admittedly is abutting to “Kaikondarahalli Lake”. Site’s boundary touches the Revenue area of the lake. The map also shows a nalla/*Kharab* passing almost in middle of the project site and from equal distance of the buildings proposed to be constructed as Block-1 and Block-2 from that nalla/*kharab*. The distance of 75 meters shown as buffer line has been taken from the water periphery of lake to the buildings outer layer in the disputed site called as ‘Building Line’. Sanctioned DP also shows two Park and Open Space, Area 1687.15 square meters in part 1 and 3406.72 square meters in part 2, just abutting the lake’s water periphery touching almost the entire boundary of the lake on southern side with project site. The nalla’s/buffer zone is also shown to be crossed by a fire drive way in the middle which is 12 meters wide. This map does not disclose any other Rajakaluves/drains passing through disputed site or near thereto.

(b) At Sl. no. 1.22, under clause (II)-Activity of Appendix 1, Form 1, PP has disclosed as under:

Sl. No.	Information/checklist confirmation	Yes /No	Details thereof (with approximate quantities/rates, wherever possible) with source of information on data
1.22	Stream crossings?	Yes	A primary nala connecting to Kaikodrahalli lake is crossing across the project site. 50 m buffer on both side are provided as per the NGT specifications.

(c) Similarly, at Sl. no. 2, under clause (III)-Environment Sensitivity, Appendix 1, Form 1, with regard to situation of lake, PP has given following information:

Sl. No.	Information/checklist confirmation	Yes/ No	Details thereof (with approximate quantities/rates,

			wherever possible) with source of information on data
2	Areas which are important or sensitive for ecological reasons- Wetlands, watercourses or other water bodies, coastal zone, biospheres, mountains, forests.	Yes	Kaikondrahalli lake exist at a distance of 75 m Harlur/"Kasavanahalli Lake" at a distance of 0.800KM

(d) When we questioned learned counsel for PP that lake is abutting the project site and not at a distance of 75 meters, he could not dispute this fact but said that PP intended to mean that from the outer surface of buildings, distance was 75 meters. The explanation cannot be accepted for the reason that a fact mentioned in a document without any ambiguity could not be permitted to be explained orally and that too in a totally different or reverse manner. When something is clear from record no subsequent explanation, which is not consistent with the facts mentioned in the documents, can be accepted or entertained.

Location details given in the inspection report of CFO (KSFES):

(e) Surrounding properties in column 10 of the report dated 04/07.12.2017 mentioned location of lake as under:

	A. General Building requirements:		
10.	Surrounding Properties		
	Front (East)	:	Vacant land
	Rear (West)	:	18.00 mtrs wide Road & 12.00 mtrs. wide dead end Road
	Side (North)	:	Lake & vacant land
	Side (South)	:	Residential Buildings

Same position is mentioned in report dated 20.03.2018.

Inspection report of Environmental Officer in respect to grant of Consent for Establishment by KSPCB:

(f) Location details had been given in the said report on page 475 of the record of Appeal which we have quoted above. Report clearly shows that “Kaikondarahalli Lake” is adjacent to the project boundary towards north direction. Kasavanahalli Lake is located at a distance of about 393 meters towards south and not 800 meters as stated by PP in application submitted to SEIAA, Karnataka for grant of EC. Inspection report also shows presence of stream/nalla passing in the middle of the proposed project site flowing from Kaikondarahalli Lake” to Kasavanahalli Lake; two nalla/drains towards south of proposed site located in Survey no. 61/1, runs parallel to the proposed project site. The distance between building line of Block-1 to the nalla is about 23 meters and to the project boundary is about 16 meters. Second nalla is located in Survey no. 57 towards south east side and runs parallel to proposed project site. The distance between building line of Block-2 to said nalla is about 29 meters and to project boundary is about 19.19 meters.

(g) In the application Form 1, with regard to these two nalls, nothing has been said by PP.

(h) First Joint Committee’s Report dated 18.09.2019 said about location of “Kaikondarahalli Lake”, as under:

“Kaikondarahalli Lake is having total area of 48 acres 23 guntas, perimeter of about 2.17 km, located on Sarjapura Road close to Kaikondarahalli Village. The lake area has two survey numbers i.e. 18 acres 18 guntas comes under the Survey No. 8 of Kaikondarahalli village and 30 acres of 5 guntas comes under Survey no. 70 of Kasavanahalli village limits.”

(i) Further, report said that Survey nos. 39, 40, 62, 63, 68, 69, 71, 72 and 73 are adjoining “Kasavanahalli Lake” and “Kaikondarahalli Lake”. Instead Survey no. 62 and 63 of proposed site are in buffer area of “Kaikondarahalli Lake”.

(j) Second Joint Committee’s Report dated 29.06.2020 mentioned location of lake and project site and said:

- **North side: Kaikondarahalli Lake**
- South side: M/s. Sriram Chirping Apartment & Residential Buildings
- East side: Vacant Land
- West side: Road and Residential Layout.

(k) With respect to “Kaikondarahalli Lake” and its feeder drains, Second Joint Committee’s report said:

“2.1 Kaikondarahalli Lake

Kaikondarahalli Lake is situated adjacent to this project at north, having total area of 48 Acres 23 Guntas, perimeter of 2.17 km, located on Sarjapura Road close to Kaikondarahalli Village. The lake area has two survey numbers i.e. 18 Acres 18 Guntas comes under Sy. No. 8 of Kaikondarahalli village and 30 Acres and 5 Guntas comes under Sy. No. 70 of Kasavanahalli village limits. **There are three main feeder drains to the Kaikondarahalli Lake, one on south Eastern side, second on Western side and third one towards Southern Side of the lake.”**

(l) In para 5.0, details of primary/secondary/tertiary nallas has been given by this Second Joint Committee. There is also a map showing a drain passing through project site almost in the middle leading to “Kaikondarahalli Lake”. Besides, there are also drains adjacent to project site. Committee, however, has categorized these drains in its own way and its observations are:

“Secondary Drain

There are **two streams originates from Kasavanahalli Lake and flow towards Kaikondarahalli Lake**. Out of two streams, **one stream flow inside** the Sy. Nos. 51, 57 and **63**, and the **second stream** flow in Sy. Nos. 31, 47, 48, 46, 58 & 59 and joins in Sy. Nos. 57, and further flow **in Sy. No. 63**.

The said streams flow in Kharab area of respective survey numbers and both streams joins together in Sy. No. 57 and **further flow in Sy. No. 63, ultimately joining into Kaikondarahalli Lake**. The said drain flowing in sy. No. 63 **to be considered as Secondary Drain**.

Tertiary Drain

There is one more **single drain on Southern East side of the project originating from Sy. No. 61**, pass through Sy. No. 43, 35 and 37. Since, **this single line** drains runs in various survey numbers, the same is to **be considered as Tertiary Drain**.

Pillu Kaluve

A **single line drain is spotted** (Agricultural drain or feeder channel) in Sy. Nos. 56 & 57, **adjacent to Sy. No. 63** the **single line drain ends on Secondary drain**. Since the single line drain terminates at Secondary drain; the same is to be considered as Pillu Kaluve or a Lead drain for which buffer zone is not applicable.”

- (m) In para 7.1 of report, Second Joint Committee has discussed compliance of actual buffer zone by PP and in this context, it has said that there is no Primary drain in the area, there is a Secondary drain which is about 51.20 meters to 54.8 meters from Block-1 building line and 59.40 meters from Block-2 building line. Then, it says that there is a Storm Water Drain (which it has placed in the category of Tertiary drain), passing at Survey no. 61 of southern side of project site. Further, as per village map, it also says that in DP approved by BDA and Building Plan approved by BBMP, this nalla/Storm Water Drain is shown outside the boundary wall of project site. Mentioning its distance from Block-1 building as 26.40

meters, Second Joint Committee observed that it complies 'buffer zone' as per Supreme Court judgment in ***Mantri Techzone Private Limited v. Forward Foundation & Ors. (supra)***. Interestingly in DP Plan, what has been said to be Secondary drain by Second Joint Committee Report is mentioned as nalla/kharab and this is also admitted by PP in its reply para 3(ii) that one Primary Rajakaluve flowing through portion of survey no. 63/2, specified as kharab in all Revenue Records yet Second Joint Committee has treated it a Secondary drain without giving any reason therefor.

270. In the application submitted by PP, he has not stated that he proposed any construction in buffer area of lake or drains but Second Joint Committee's Report mentions about constructions in the buffer zone of lakes and drains and has justified the same as permissible by referring to Clauses 4.12.1, 4.12.2 (i) (ii) of RMP-2015. We have already quoted relevant extract in earlier part of judgment in para 58. The construction prohibited by Wetland Rules, 2010 or 2017 could not have been justified by referring to RMP-2015. Environmental laws would prevail over provisional law and it has also been held by Supreme Court in ***Mantri Techzone Private Limited v. Forward Foundation & Ors. (supra)***.

271. In the Third Joint Committee's Report, we find that Committee has failed to give its own findings in respect of the site and analysis of documents. Mainly it has relied on information given by different authorities and with regard to wetlands, it has laboured more to observe that "Kaikondarahalli Lake" is not notified under Wetland Rules, 2010 and Wetland Rules, 2017 and in any case, from lake to building line at the best 50 meters buffer was to be observed which has been maintained

by PP, ignoring direction of Supreme Court in ***M.K. Balakrishna (supra)*** applying restrictions under Rule 4 of Wetland, 2010 to all 2 lacs and more lakes find place in “National Wetland Inventory and Assessment”-Atlas.

272. Further, it has tried to reconcile between First and Second Joint Committee’s Reports, and after referring to findings of Second Joint Committee Report that there is a nalla within the project area which connects Kasavanahalli tank to Kaikondarahalli tank, it has observed that the area of lake as per Revenue Record, is only 48 acres and 23 guntas which does not include project land but has ignored to consider the concept of catchment area. It has said that construction of building i.e. building line is beyond 75 meters from lake periphery. It has further said that firstly building is not being constructed in buffer zone of 75 meters from the lake periphery and secondly constructions made with regard to drive way, ramp etc., were permitted. With regard to construction of U-type RCC box drain and RCC box culvert in kharab land, report has referred to letter dated 02.08.2017 issued by Chief Engineer communicating approval of Commissioner of BBMP under Section 288A and 288(1)(C) of KMC Act, 1976.

273. Third Joint Committee, while measuring buffer zone has taken demarcation line from ‘building line’ i.e. the plinth area of the towers sought to be constructed by PP and has conveniently ignored other admitted proposed constructions. The terms ‘building line’ has been defined in Section 12, Explanation of KTCP Act, 1961 and reads as under:

“Explanation:

(i) “Building Line” means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme;”

274. The above provision shows that the term 'building line' is for some other purposes and not to be taken as a point of measurement in a construction project involving different type of constructions, when we have to find out distance from buffer line to protect a water body. No such restrictive view can be taken or applied. The Committee completely misdirected itself by taking buffer zone distance with building line ignoring the project site and various other constructions, PP has proposed therein.

275. At this stage, we also place on record that some construction in buffer zones, at least stand admitted even by these reports, but the same have been ignored on irrelevant reasons despite that the same are violating *ex-facie* restrictions of 'no construction zone' in buffer area.

276. The application submitted by PP for grant of EC does not mention all these facts, though, they were of importance for the purpose of assessment of construction project in respect of the Assessment of Impact of construction project on environment which is basic objective of grant of EC by SEIAA or MoEF&CC, as the case may be. It thus cannot be doubted that all information was not given by PP, and some information was incorrect also.

277. In EIA 2006, Clause 7(i), Stage (1) screening says that scrutiny of application, seeking prior EC shall be considered by Competent Authority for determining whether or not the project or activity requires further environmental studies etc. depending on the nature and location specificity of the project. The location and surrounding area is, therefore, of utmost importance and it was incumbent upon PP to disclose all correct facts in this regard.

278. Apparently in regard of position of “Kaikondarahalli Lake”, PP in the application, has given wrong information that lake is at a distance of 75 meters and “Kasavanahalli Lake” is at a distance of 0.8 km, though, it is evident from record that “Kaikondarahalli Lake” abuts the project site itself and sufficient part of adjoining area, PP has proposed in its DP to be used as Park and Open Space. “Kasavanahalli Lake” is at a distance of about 390 meters.

279. At Sl. No. 3, under clause (III)-Environmental Sensitivity of Appendix 1, Form 1, information with regard to *flora and fauna* was also enquired, but PP has replied that it is not applicable. Applicant in OA-2 has specifically stated that the lake has peculiar type of flora, fauna and vegetation around it and this fact has been reiterated in subsequent application dated 05.02.2019 filed seeking permission to place additional documents on record. To contradict it, nothing has been placed on record by PP.

280. Further, use of adjoining area to lake, which was admittedly buffer zone and had to be treated as ‘green belt’, allowed as a part of project, permitting PP to develop it as Park and Open Space, was clearly impermissible particularly in view of Tribunal’s judgment in **Forward Foundation & Ors. (supra)**, dated 04.05.2016, wherein para 63, Tribunal said :

“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.”

281. Therefore, green belt which was to be maintained by PP has to be other than the area of buffer zone. In the case of wetland buffer zone has to be treated as green belt around the lake but not as a part of the

project. Therefore, development of park in the area adjoining lake was illegal and this fact was neither disclosed by PP to SEIAA, Karnataka, nor it has been examined by them. Third Joint Committee has preferred to rely on RMP-2015 ignoring the law that environmental laws shall prevail over provisional laws. Wetland Rules had to be followed. This is a patent illegality and in violation of Environmental laws including Wetland Rules.

282. It has been pointed out to us that the buffer zone prescribed under in RMP-2015 was modified by Tribunal in its judgment in **Forward Foundation & Ors. (supra)** but this part of judgment dated 04.05.2016 has been set aside by Supreme Court in **Mantri Techzone Private Limited v. Forward Foundation & Ors. (supra)** and, therefore, distance of buffer zone has to be followed as per RMP-2015. For the purpose of present cases, we have not adhered to buffer zone distance as given in judgment of Tribunal in **Forward Foundation & Ors. (supra)** but while considering matter on merits, we have looked into the distance of buffer zone as mentioned in RMP-2015. It is clear that several constructions like drive way ramp, fire drive way etc. are in buffer zone, clearly in violation of condition of 'No Construction Zone' i.e. buffer zone. These aspects having not been disclosed by PP in application for grant of EC nor have been examined by SEIAA, Karnataka while granting EC, therefore, we have no manner of doubt that SEIAA, Karnataka has granted EC without proper examination of relevant facts and aspects and without verifying facts from other documents.

283. We also find strange that construction over kharab i.e. Primary Drain passing through project site (Second and Third Committee have treated as Secondary drain) has been justified. Admittedly, it was a kharab land and it is also admitted that no construction is permitted on

kharab. However, both these Committees have relied on the order of Chief Engineer, BBMP stating that Commissioner in exercise of powers under Sections 288A and 288 of KMC Act, 1976 has permitted, without examining whether those provisions are applicable and could have been availed for the purpose of the alleged permission. The patent violation in this regard has been sought to be validated.

284. We also find that the order permitting construction of RCC drain and RCC box type drain for Storm Water Drain flowing in Survey no. 63/2; order is said to have been passed by Commissioner communicated to Chief Engineer on 02.08.2017, when matter was not even brought before Authorities dealing with environmental matters and with respect to construction over a drain carrying rain water from one lake to another; there was a prohibition under Wetland Rules and same could not have been superseded by any local body or authority under local laws. Supreme Court in ***Mantri Techzone Private Limited v. Forward Foundation & Ors. (supra)*** has said that Central Enactment relating to environment comes under Entry 30 of Schedule 7, List 1 and will have over riding effect over State Legislation. The rules relating to wetland having been framed under EP Act, 1986 read with EP Rules, 1986 obviously over ride Provincial legislation. RMP-2015, at the best, a delegated legislative exercise under State law, could not have prevailed over Parliamentary law. Any action by an authority under State Act contrary to such Central law is patently illegal and without jurisdiction.

285. Even otherwise, we find that Section 288A and 288(1)(c) of KMC Act, 1976 are not applicable. Both the provisions have been quoted above. Section 288A says that no person shall erect or set up any wall, fence, rail, post, step, booth or other structures or fixtures in or upon any

public street or upon or over any open channel, well or tank in any street so as to form an obstruction to, or an encroachment etc. Therefore, anything which would cause an obstruction in public street, is prohibited by Section 288A but therein an exception that with the permission of Commissioner, the said restriction can be overlooked. It is not a case of anything to be done with public street in the project in dispute or lake, therefore, Section 288A *ex-facie* has no application in this case. Similarly, Section 288 permits Commissioner to grant license when he finds that an owner or occupier of any premises needs to construct any step or drain-covering necessary for access to the premises. Again here is not a case applicable to the facts of the present matter. Storm Water Drain connecting two lakes flowing water from one to another was passing through project site almost in the middle. It could not have been disturbed, altered, varied and no construction within buffer zone thereof could have been made by PP. This aspect has been considered in wholly illegal and twisted manner. PP started construction of the drain, clearly acted illegally and unfortunately, SEIAA, Karnataka having not looked into this aspect of matter though evident from record, has also failed to apply mind. Such permission was obtained by PP in August 2017 and application was submitted to SEIAA, Karnataka on 14.10.2017 and EC was issued on 10.01.2018 still SEIAA, Karnataka has not looked into this illegality which itself would have justified rejection of the application. We answer second aspect of First question against PP.

286. Second question is about construction whether commenced by PP on the project site before obtaining permission/clearance.

287. On this aspect, in the Appeal filed on 09.04.2018, it is specific case of appellant that PP has started construction at the project without

sanctioned Building Plan, consent under Section 25 of Water Act, 1974 and thus, violated conditions of EC. In support thereof, it has filed, annexure A6 page 136-147, photographs, showing construction on the project site. We have gone through the said photographs and find that not only construction is clearly visible from the photographs but what is disturbing is that excavated soil has been dumped in the water on the periphery of the lake. Even inside the lake, we find dumping of excavated soil. In other words, there is reclamation of some part of the lake. Some vegetation in the surrounding area of the lake has also been uprooted. Responding to these averments, PP, in para 42 to 45 at page 189 of its reply has said as under:

“42 to 45 The contents of para 42 to 45 are denied as false and incorrect. It is denied that any ad hoc or for that matter any construction is taking place at the site. The contents of the preliminary submissions and objections are reiterated and relied upon in response to the corresponding paragraph. The plaint is trying to paint a picture that construction activities are being undertaken without a valid consent being obtained under Section 25 of the Water Act or without the building plan. The appellant is making false assertions to prejudice the mind of this Hon’ble Tribunal and strict action must be initiated against the Appellant in order to ensure that such false and fabulous publicity seeking Appeals are not filed. It is submitted that the Respondent no. 11 has applied for the necessary consent under Section 25 of Water Act as well as the section plans and undertake to commence a construction work upon obtaining all necessary approvals from the secretary authorities. It is reiterated that the **Appellant is relying upon the photographs** to falsely show construction activity, whereas, the **correct fact is that only preparatory work towards contouring the landscaping of green belt so as to derive benefit of the upcoming monsoon has taken place**. It is reiterated that Answering respondent is not in violation of any law. A true copy of the Application seeking consent under Section 25 of the Water (Prevention and Control of Pollution) Act as Annexure R-4.”

288. Besides PP has also constructed a model flat area 2500 square feet and this fact is admitted by PP as well as has also been noticed by Committees appointed by the Tribunal. PP also had started

concretization of soft water drain taking advantage of the alleged permission obtained from Commissioner, BBMP in pursuant to Chief Engineer's letter dated 02.08.2017. All these constructions commenced before grant of EC. KSPCB officer in his inspection dated 5.2.2018 found these constructions.

289. Thus, construction activities which are evident from photographs have been admitted but sought to explain that it is only preparatory work towards contouring and landscaping so as to derive benefit of upcoming Monsoon. Same stand was taken during submissions by Shri Pinaki Mishra, learned counsel for PP. However, we are not satisfied with this explanation also. 'Construction' involves contouring and leveling of land etc. also. This has been held by Tribunal in ***Forward Foundation & Ors. (supra)***. It is evident and admitted that consent was not available with PP in April 2018 or earlier thereto. PP's case is that it has applied for the same but that does not mean that he was authorized to proceed with construction on the land in dispute. Therefore, it is also evident that PP has violated provisions of EIA 2006, terms of EC and acted illegally by going on with the construction activities on the project site.

290. Coming to another angle involved and evident from the pleadings of OA-2, we find that Google maps and other photographs of project site and lake area show that construction on the site, abutting green vegetation surrounding lake and also there is encroachment on the periphery of the lake i.e. buffer zone by dumping excavated clay or the soil used for leveling etc. At this stage, we may also point out that restrictions under Rules 2017 are applicable not only for the wetland but Zone of Influence which has to be ascertained by Wetland Authorities constituted under Rules 2017. We are informed that Karnataka State Wetland Authority

has been constituted vide notification dated 13.03.2018 and similarly, National Wetland Authority has been constituted. The 'Zone of Influence' as the term suggest cannot be located giving a fixed universal distance applicable in all the cases like buffer zone described by local body in Bye-laws. On the contrary, it has to be ascertained looking to the nature of the wetland, its surrounding, its *flora-fauna* and other specific kind of activities mainly related to wetland or its surroundings. In this case, it was incumbent upon the Competent Authority before granting EC to examine Rules 2017 and in particular 'Zone of Influence', since here is a case where project site was abutting a lake which was connected by a Storm Water Drain with another lake. Protection of wetland and its Zone of Influence ought to have been a matter of prime importance for the Statutory Body and Regulator constituted for protection of environment. Time again, Courts have stressed upon more responsible and careful function of Statutory Authorities/Regulators upon whom responsibility of protection of environment has been conferred but unfortunately, these authorities and bodies are not justifying heavy responsibility and confidence conferred and reposed upon them by Statute. Instead experience show that working and functioning of these bodies are unmindful, callous and careless which is causing more harm to environment.

291. In this case, a wetland/water body and an attempt to damage it, by allowing construction in a site abutting to wetland/water body is an issue. Basically, efforts of appellant/applicant is to protect wetland/water body.

292. We know and can take judicial cognizance of the fact that entire country is facing a tremendous scarcity of drinking and potable water

almost everywhere and, in fact, it is a global phenomenon. It is this reason which required Regulators/Statutory Authorities to act responsibly for protection of environment and ecology and in particular, wetland/water bodies. They are expected to function in a more responsible and accountable manner and deeper study ought to have been made, before allowing any construction activities in vicinity of a wetland/water body, more so when project site is abutting the wetland itself.

293. Importance of water no one can deny.

294. It cannot be doubted that water though cover three-fourth of earth, still drinking and potable water is in great scarcity. Manmade ventures are the basic cause for this situation. Protection of wetland assumed international importance at very late stage. However, serious concern at global level is writ large from the fact that in 1991, Convention in Ramsar was held only to discuss protection of wetland. Some important wetlands across the world were identified therein. Signatory countries vowed to protect wetland by taking all necessary measures including stringent actions.

295. This is a matter of common knowledge that people residing in urban areas had turned cities into jungles of concrete. Nature has lost its place, healthy and clean environment has been compromised in the name of development. The consequences are air pollution, scarcity of drinking water, extreme heat and cold, lack of raining etc. Earlier's comfortable life in such cities has become a nightmare. Resourceful people are now resorting to other areas on the outskirts or near such cities where they can enjoy proximity with nature. This attempt or desire is nothing but costing heavy to nature. It is a concerted effort by greedy

elite class to cause destruction of nature in un-probed areas, which have remained untouched till date, but now are being frequently occupied by them.

296. These constructions near water bodies or forest areas etc. are not as a necessity to provide shelter to homeless needy people or development to economy in general but virtually a part of luxury life for those who can afford. The elite class and its greed, in the name of development, has already destroyed cities and now moving towards the areas, rich in natural flora and fauna including forests, lakes, rivers, streams i.e., different type to water bodies and wetlands. In the name of stay in the lap of nature, in reality they are causing damage and destructing nature.

297. In fact, commercial or residential construction projects do not need vicinity of wetlands or water bodies etc., as a necessity but Promoters/PPs/Developers normally choose such sites so as to increase salability and commercial value of their projects/constructions.

298. Various statutory authorities which were constituted to serve as a watchdog for protection of these places, rich in natural flora and fauna, are not very sincere and serious in protection but working only technically. They are liberal in allowing these activities instead of adopting strict and stringent measures necessary for protection. We can see destruction of Aravalli Hills in National Capital Delhi itself, and disappearance of several small chains of hills in many States. When we come to the garden city of Bengaluru itself, the facts have already been noted that in the past there were hundreds of lakes in the city which are now reduced to just two figures. Most of the lakes have been reclaimed, encroached or otherwise usurped by the so called development activities.

299. The concept of wetlands, as we already said, is not a mere water contained water body but its interface and surrounding i.e., the catchment area/buffer zone/zone of influence etc., which, if allowed to be used for purposes other than wetland connected activities, may erode/damage or extinct the entire wetland itself. Whenever, commercial and other activities i.e., other than what can be termed as activities for protection and preservation of wetlands and its surroundings, are allowed to be taken near or abutting wetland, it has to be ensured that certain area from the periphery of wetland is reserved and no commercial or development activities should be allowed thereon otherwise wetland/water bodies will suffer adversely. How much area should be reserved or be declared non-development area around a wetland/ water body has to be determined looking to various aspects relating to concerned wetland/water bodies. A universal determination may not be proper. It is true that provisions may be made declaring certain minimum area within which no development activities can be allowed so as to protect wetlands/water bodies but this minimum area is not the maximum and restriction over further area, if any required, will depend upon the nature of wetland/water bodies, its vegetation, flora, fauna and other activities connected therewith which may be found necessary for its protection and preservation. With that view of the matter, in Wetlands (Conservation and Management) Rules, 2010 and 2017, instead of using the term “Buffer Zone”, the term “Zone of Influence” has been used which is obviously a wider term than “Buffer Zone”.

300. When we talk of maintaining greenbelt surrounding a wetland/water body, it does not mean a public recreation place like public park, open space etc. It means a place reserved for natural

wetland's own activities untouched by any PP/Developer for taking it as a part of its project.

301. In Indians sub-continent, with the passage of time, for one or the other reasons or sometimes compelling reasons, when inhabitants were ruled by people from outside Indian sub-continent, the Rulers ignored or missed dictates of Vedic Literature and propagate to the people also. The result is, with passage of time, nature has got worst affected and deteriorated quality and contents significantly.

302. Problem of environment today is a Global phenomenon. The irresponsible and unmindful development has proved an enemy to environment. It has increased pollution everywhere compelling Global leaders to take recourse for protection of environment, if necessary, by framing strict and stringent provisions, but fact remains, that condition of environment today is extremely alarming.

303. In the Tribune 23rd June, 2006, it was published that 70 percent of all available water in India is polluted. Even, Supreme Court realised the pace with which even wetland were eroding and disappearing in ***M.K. BalaKrishnan vs. Union of India (Supra)*** and found need of immediate action. It directed Government of India to apply Rule 4 of Wetlands Rules, 2010 to 2,01,503 wetlands identified and mentioned in "National Wetland Inventory & Assessment", to avoid any further extinction of wetlands.

304. Therefore, protection of wetlands in all seriousness is a matter of great concern. It cannot be done in a technical or formal manner but require sincere, wholesome and comprehensive effort to protect not only

territorial boundary of water or periphery of wetland but the entire surrounding of wetland necessary for its preservation.

305. When we look into the matter objectively and apprehend what is latent, we have no manner of doubt that any economic activity which is a part of a civic amenity of any particular project cannot be allowed either in a wetland or within its “Zone of Influence” which would include buffer zone also. PP, even if has ownership of some land abutting a wetland, the area of such land of PP which comes within the “Zone of Influence” including buffer zone cannot be allowed to be used or developed for the purpose of the Project. It has to be left as it is, as a part of wetland itself and needs be protected as a greenbelt i.e., only trees etc., can be planted but for that purpose also Horticulture and Forest Expert’s opinion has to be obtained so that characteristic of specific flora and fauna of the area is not disturbed and coherence is maintained.

306. “Kaikondarahalli Lake” is an old lake but dried up on account of unauthorized and illegal construction and encroachment around it. It was rejuvenated as stated by BBMP/BDA in the Year 2011 but now efforts are continuing to occupy its surrounding area by raising constructions which are bound to throttle wetland activities and it would ultimately eat up the entire wetland in question.

307. In respect of Bangalore city, time and again many articles etc., have been published wherein attention was drawn that rampant use of groundwater, change in land use, dumping of city waste in the catchment, sand and stone mining and removal of forest have made rivers, streams and wetlands go dry. Still, Regulators/Statutory Authorities, who are responsible for protection, preservation and maintenance, are noticeably negligent in discharge of their duties of

protecting these water bodies/wetlands and other ecological places from being exploited by the greed of men.

308. 'Sustainable Development' is the key word for protection of environment including wetland. It means that simultaneous development has to be allowed but not at the cost of one or another. In the name of development, environment cannot be allowed to die, may be a slow death.

309. Nature has provided lot of water to the mankind but we are not realising how much important it is for us to preserve and protect water which is available in different forms. It was suggested at some point of time that scarcity of water or pollution of land and rivers can be addressed if we calculate ecological cost of water and people who use water, should be required to pay for it then they would realise the cost of water and may be motivated to preserve it but for various political and other reasons neither it was found practicable nor possible.

310. Competent Authority, while grant Environmental Clearance, is under a statutory obligation to consider application in Form 1 and 1A submitted by PP, in the light of information disclosed therein, visit the site and find out whether there is any possibility of damage to environment if Environmental Clearance is granted and project is allowed to proceed. In this regard, Principle of Precaution has to be applied with full force. In other words, grant of Environmental Clearance is not a mechanical exercise. In observing so, we are fortified by the dictum of Supreme Court in **Common Cause Vs. Union of India (2017) SCC 499**, wherein Court said that

"There is no doubt that the grant of Environmental Clearance cannot be taken as mechanical exercise. It can only be grant after due diligence and reasonable care since damage to the environment can have a long term impact....."

311. The above dictum has been reiterated and followed in ***Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Ors., 2020 SCC OnLine SC 347.***

312. It was also held in ***Alembic Pharmaceutical Ltd. (supra)*** that before issuance of Environmental Clearance, statutory notification, i.e., EIA, 2006 warrants a careful application of mind besides study into the likely consequence of proposed project on the environment, and for this reason, concept of *ex-post facto* clearance was held alien to environmental laws. Court said that environmental laws cannot take cognizance of the notion of *ex-post facto* clearance since it will be contrary to law, Precautionary Principle as well as need for sustainable development.

313. In this case, facts show that the things are neither straight nor proceeded in ordinary course of business. Instead there is something fishy and suspicious attracting the concept of malice in law. The chronology of the steps taken by PP and the manner it gives different information to different authorities show lack of *bonafide*, and transparency.

314. PP was so confident of project and its execution that even before any step could have been taken for commencement of Project activities, it applied to BBMP seeking permission of construction of RCC Box, Drain and Culverts and permissions were granted by Commissioner, BBMP in August, 2017. At that time, neither Development Plan was passed nor even application for grant of EC was submitted. Still PP was sure and confident that it can proceed with construction activities over and in respect of Storm Water Drain which was passing almost in the middle of project site despite that statutory provisions prohibit not only any alteration or modification of such natural Storm Water Drain but also

prohibit construction in the specified buffer zone thereof. This was known to BBMP also in view of operation of RMP-2015 in Bangalore city still such permission was granted by Commissioner and that too by exercising power under statutory provisions which did not give any such power to him and he acted wholly without any jurisdiction. This shows that everything was not fair, straight and transparent but PP must have reasons for its confident approach of taking steps even in violation of environmental laws and destructing environment for which he got support from statutory authorities. PP gave different figures of number of units it proposed to construct, built up area, drains, and with regard to location of project site vis-a-vis, the lake and drains etc., and yet all these flaws on his part not only stood condoned or omitted or ignored by various authorities from time to time, but unfortunately, even Second and Third Joint Committees, without properly analyzing all the document, as we already discussed, have proceeded to somehow or the other justify action of PP though apparently it was not so.

315. The Second and Third Joint Committees have noticed that project site is abutting “Kaikondarahalli Lake” and PP has proposed to develop Park and Open Space as a part of the project in an area connecting to the periphery of the lake itself but had justified it in the garb of green belt completely ignoring and forgetting that a green belt on the site of lake or a water body is open to all and never can be treated as part of construction project particularly residential project where the entire area is part of the project and confined to benefit of the beneficiaries/occupants and not for general public. A part of buffer zone could not have been allowed to be part of a private construction project making it restricted for the use of the beneficiaries of the project and not for general public.

316. Similarly on the issue of built up area these Committees have referred Item 8 of Schedule to EIA 2006 as initially made and have omitted to refer amended Item 8 which brings in entire service areas of construction project and basement in built up area. Stand of PP taking at a later stage that as a matter of fact it will proceed with lesser “built up area” or lesser number of flats etc., will not justify statutory permissions/sanctions/clearances which have been granted on different facts disclosed by PP when he sought permission/consent/clearance and submitted requisite application and forms etc. The correctness of sanctions, permissions and clearance etc., given by Statutory Authorities has to be judged in the light of information given by PP in his application/form etc., seeking such permission, clearance and sanction etc., which has not been appreciated unfortunately by Second and Third Joint Committees in their Reports. We are very clear in our mind that these Report are based on incorrect facts, lack of appreciation of information whatever available on record and ignore several facts which point out to the fault of PP. Hence, we reject both these reports.

317. We do not propose to burden the judgments with catena of authorities on the point that in deciding matters relating to environment and the cases where norms have been flouted, basic principles of Sustainable Development, Precaution and Polluters Pay as well as the liability of PP for restitution and rejuvenation of environment which has been damaged by it, environment compensations/damages or costs are to be followed and applied.

318. Summing up, we find serious fault and violations of environmental laws and norms on the part of PP as well as some Statutory Authorities including SEIAA, Karnataka and BBMP in particular. The faults and

violation which we have already discussed in detail may be summarized as under:

A. Information regarding Built up Area:

a) As per DP-

- Gross built up area for Block 1 & 2-**169957.37** square meters.
- Built up area (after deduction for Shafts and cutouts)- 127149.25 square meters.
- Net FAR-94705.36 square meters.
- Number of Units-688
- Number of cars provided for parking-758

b) As per application Form 1 and 1A submitted to SEIAA, Karnataka for grant of EC-

- Built up Area-128193.9 square meters.

c) As per EC dated 10.01.2018:

- Total built up area-128193.9 square meters
- Total units/flats-655
- Parking for cars-877

d) As per KSFES report:

- Total built up area-124050 square meters
- Total units/flats-625
- Parking for cars-854

(Here the built up area has been calculated exclusively on the basis of 655 flats and staircases etc. provided in the tower. Other civic amenities and construction have not been taken into consideration.

e) As per BWSSB:

- Total built up area-171755.37 square meters

- B. As per inspection report dated 23.02.2018 of Environmental Officer of KSPCB, Bengaluru, built up area claimed by PP is 128193.9 square meters but Site Plan shows, 93423.70 square meters and construction of 655 flats and club house.
- C. PP sought construction of RCC Drain and RCC box type culvert for Storm Water Drain connecting both the lakes i.e. “Kaikondarahalli Lake” and “Kasavanahalli Lake” flowing in Survey nos. 63/2 by submitting application dated 13.06.2017 and Commissioner, BBMP allowed on 26.07.2017, communicating by Chief Engineer, vide letter dated 02.08.2017 though till that date, neither DP was sanctioned nor even application for grant of EC was submitted, nor this fact was disclosed in the application for grant of EC. Further PP commenced constructions even before grant of EC and CFE.
- D. With regard to distance from lake, PP mentioned in application Form 1 and 1A that the site is 75 meters from the lake though site is abutting the lake as shown by DP itself.
- E. The position of drains and numbers is also differently stated in three Joint Committee’s Reports as also by various authorities inspecting the site for grant of sanction/permission/clearance sought by PP.
- F. PP claimed that huge quantity of soil has to be excavated and that will be used for leveling etc. but as photographs show that it was dumped on the side of the lake and we also have noticed some dumping of soil in the lake water also.
- G. The development of project in buffer area by developing Park and Open Spaces confined to beneficiaries of project is evident from record but in an illegal manner, Second and Third Committee have justified

the same, ignoring the relevant environmental laws on this aspect including Wetland Rules.

H. PP has taken different stand from time to time.

I. With regard to other sensitive areas at some distances which we have already discussed above, no information was given by PP.

J. With regard to existence of *flora-fauna etc.* PP has not disclosed anything in the application submitted for grant of EC.

319. With this backdrop, we now find force in the objections raised by applicant/appellant that Third Joint Committee who actually made inspections thrice and submitted report is not the one which was constituted by Tribunal and MoEF&CC. The officials, who were actually appointed members, chose on their own to send their sub-ordinates or officers lower in rank and they are signatories to the report. No such power was given to the officers, made members of the Committee, to delegate to anyone else. This action on the part of such members is wholly unwarranted, unauthorized and illegal. In fact, they stand in flagrant defiance of order of Tribunal by permitting such persons to prepare report and sign it though not authorized to do so and could not have done it. In this view and considering discussions already made above, we have no hesitation in holding that change in the Committee by the members appointed by this tribunal is wholly illegal, unauthorized and it is an additional ground to reject the report of Third Joint Committee. The confidence of PP in proceeding ahead at different levels without caring for Statutory Provisions, Procedures and Environmental Laws, supported by some of the statutory authorities is evident by the conduct of senior officers of various departments who were appointed

members of the Committee by Tribunal and MoEF&CC, yet they defied the same. It appears that in a concerted way, some officials have acted to somehow justify patent illegality and bold defiance of law on the part of PP. Clearly, there is an evident lack of *bonafide* on the part of the officials and this conduct deserves to be strongly condemned. We will request Secretary, MoEF&CC to look into the matter and take appropriate action against such erring officials.

320. Before parting, we also intend to place on record that torch bearer for protection of environment in the last about 40 years is only judiciary. Executives primarily have responsibility to preserve, protect and maintain environment as clean and green but unfortunately, treat as enemy to their own notion of development. A lot of seminars, lectures and debates are held in the name of protection of environment by Executives, political and otherwise but on the ground level substantial work is wanting. The Executives feel satisfied sometimes by framing some laws without being serious to the execution and implementation thereof. Statutory Authorities/Regulators who are made responsible for protection of environment and heavily managed by Executives lack will to do, intention to perform and desire to achieve the ultimate goal of protection of environment. Even when orders are passed on judicial side, the real problem comes with regard to implementation and execution of the orders. All excuses and pretext are put forth more to demonstrate difficulties in execution instead of showing any genuine effort towards compliance. Even the concerned departments are not honest to discharge functions in a manner which will promote preservation and protection of environment and ecology. On the other hand, it appears to be taken as a burden and obstruction in development. This approach is neither conducive nor coherent to the concept of sustainable

development. Sooner is the better that the Executives understand and show more responsibility and accountability towards nature and ecology before it is too late rendering the things improbable and impossible to be reversed.

321. In these facts and circumstances, we are of the view that Appeal and OA-2 deserve to be allowed. We order accordingly and issue following directions:

- (i) EC dated 10.01.2018 is quashed.
- (ii) The construction raised by PP (respondents-11 and 12) having commenced even before grant of Consent to Establish by KSPCB and in violation of conditions of EC, and also looking to the conduct of PP who has continued to contest the matter instead of making an attempt to rejuvenate and restore damage to environment, we direct that the constructions made on site shall be demolished immediately. State Wetland Authority and BBMP shall take steps for restoration and rejuvenation of the area as originally it was.
- (iii) We impose compensation for damage to environment as 10% of the cost of project. The cost of project mentioned in the application submitted for grant of EC was 310 crores, hence PP is directed to pay 31.00 crores. This amount shall be used for demolition of the constructions as per direction (ii), restoration of the area to the original position, rejuvenation and reforestation etc. of the “Kaikondarahalli Lake” and its surrounding area. PP shall deposit the amount within one month with the State Wetland Authority. The amount shall

be kept in a separate account by the said authority. The same shall be utilized by preparing a restoration plan by the said authority with the assistance of the BBMP, KSPCB and CPCB. Restoration plan shall be executed by State Wetland Authority and BBMP which may also be overseen by KSPCB and CPCB. The restoration plan be prepared within two months and executed within one year. It is made clear that if any amount remains available after undertaking the restoration work, the same will be utilized by the Wetland Authority for maintenance and beautification of the lakes in question. If the amount is found to be deficient, the deficiency will be made up by BBMP. If any question remains unresolved, but in the authorities, the National Wetland Authority is directed to resolve the same.

- (iv) We also impose a cost of Rs. 10 lacs upon BBMP who allowed construction/alteration of Storm Water Drain passing through the project site illegally and the said amount paid by BBMP, shall be deposited in Environmental Compensation Fund and utilized for restoration and rejuvenation of environment. The said amount shall be deposited by BBMP with the State Wetland Authority within one month and be form part of the same separate account to which compensation paid by PP will be credited.
- (v) We also impose litigation cost of Rs. 20 lacs which shall be paid by PP and deposited with CPCB to be utilized for the protection and preservation of environment.

322. OA No. 281/2019 i.e. OA-1 stands allowed and disposed in the manner and in terms of directions stated in para 155 above of this judgment.

323. A copy of this order be forwarded to the Chief Secretary, Karnataka, MoEF&CC, CPCB, National Wetland Authority, State Wetland Authority, KSPCB, SEIAA, Karnataka, BBMP and BDA by e-mail for compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

M. Sathyanarayanan,
Judicial Member

Brijesh Sethi,
Judicial Member

Dr. Nagin Nanda,
Expert Member

July 30, 2021
Appeal No. 54/2018
Original Application No. 602/2019
Original Application No. 281/2019
R&AVT



//TRUE COPY//

ANNEXURE-B

ALEMBIC PHARMACEUTICALS LTD. v.
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(BEFORE DR D.Y. CHANDRACHUD AND AJAY RASTOGI, JJ.)

ALEMBIC PHARMACEUTICALS LIMITED

.. Appellant;

Versus

ROHIT PRAJAPATI AND OTHERS

.. Respondents.

Civil Appeal No. 1526 of 2016[†] with Nos. 3175, 6604-605
of 2016 and 1555 of 2017, decided on April 1, 2020

b

A. Environment Law — Environmental Clearance/NOC/Environment Impact Assessment (EIA) — Ex post facto environmental clearance (EC) to industrial units — Impermissibility of — Held, the concept of an ex post facto environmental clearance is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA Notification dt. 27-1-1994 — An EC can be issued only after various stages of the decision-making process have been duly completed in accordance with law — Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC

c

— Revocation of ex post facto EC when not warranted — Proportionality principle — Applicability of — Imposition of penalties for having caused environmental degradation and not having obtained ECs in lawful manner, instead of revocation of ECs and closure of units (see Shortnote B)

d

— In the absence of an EC, there would be no conditions that would safeguard the environment — Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment — In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance — This would be contrary to both the precautionary principle as well as the need for sustainable development — The additional measures adopted by the industries subsequently cannot act as correctives for historical wrongs and cannot compensate for the damage already caused to the environment as a result of manufacturing activities which were carried on without ECs

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B. Environment Law — General Principles of Environmental Law — Polluter Pays Principle — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer/ Other measures — Revocation of ECs which had been granted ex post facto and closure of industrial units concerned — When warranted — Matters to be considered — Proportionality principle — Applicability of — Imposition of penalties for having caused environmental degradation and not having obtained ECs in lawful manner, instead of revocation of ECs and closure of units

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— Industries in dispute operated without an EC for several years after issuance of the EIA Notification of 1994 — Each of them had subsequently received ECs including amended ECs for expansion of existing capacities —

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[†] Arising from the Judgment and Order in *Rohit Prajapati v. Union of India* (National Green Tribunal, Original Application No. 66 of 2015, dt. 8-1-2016)

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These ECs had been operational for a long time — In addition, all the industrial units in dispute had made infrastructural investments and employed significant numbers of workers in their units

— In this view of the matter and taking a balanced approach, held, directions of NGT for revocation of the ECs and for closure of the units do not accord with the principle of proportionality — At the same time, the Court cannot be oblivious to the environmental degradation caused by all industrial units in dispute that operated without valid ECs — The industries in dispute have evaded the legally binding regime of obtaining ECs — They cannot escape the liability incurred on account of such non-compliance — Penalties must be imposed for the disobedience with a binding legal regime

— Thus, held, three industries in present case to deposit compensation quantified at Rs 10 crores each — Amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate

— Constitution of India — Art. 14 — Administrative Law — Judicial Review — Grounds for Judicial Review — Proportionality

C. Environment Law — EIA Notification, 1994 — Cl. 8 of the Explanatory Note — Exemption under — Entitlement — Matters to be established and burden of establishing the same — Explained — Held, exemption must be construed in its strict sense according to its plain terms

— Held, the burden lies on the project proponent who seeks to alter the state of the environment or to impact on the environment to demonstrate that the terms on which an exemption has been granted have been fulfilled

— None of the industries in dispute furnished an exhaustive catalogue of what were the “relevant clearances from the State Government” that had to be obtained under the provisions of the law as it then stood — A holistic analysis of the environmental impact of an industrial activity is only accounted for once all the steps listed out in EIA Notification of 1994 are followed — In that view of the matter, held, none of the industries in dispute were entitled to the benefit of the exemption contained in Cl. 8 of the Explanatory Note to the EIA Notification of 1994

D. Environment Law — National Green Tribunal Act, 2010 — S. 16 — Jurisdiction of NGT under — Scope of — Jurisdiction of NGT to strike down Circular dt. 14-5-2002 — Said circular whether issued under EP Act, 1986

— Held Circular dt. 14-5-2002 providing for ex post facto EC is contrary to the statutory Notification dt. 27-1-1994 and it does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC — Thus the administrative Circular dt. 14-5-2002 is not a measure protected by S. 3 of the Environment (Protection) Act — Hence there was no jurisdictional bar on NGT to enquire into legitimacy or vires of Circular dt. 14-5-2002

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- a — Moreover, the administrative Circular dt. 14-5-2002 is contrary to the EIA Notification 1994 which has a statutory character — The circular is unsustainable in law — Environment (Protection) Act, 1986, S. 3

- b The Environmental Impact Assessment Notification dated 27-1-1994 issued by the MoEF in exercise of its powers under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986 mandated prior environmental clearances (“ECs”) for setting up and expansion of industrial projects falling within thirty categories. The deadline for obtaining an EC under the EIA Notification of 1994 was extended by various Circulars to 31-3-1999 and thereafter to 30-6-2001. By the impugned Circular dated 14-5-2002, which was quashed by NGT, the Ministry of Environment and Forest (“MoEF”) extended the period till 31-3-2003 for those industrial units which had gone into production without obtaining an EC under the EIA Notification of 1994 to apply for and obtain an ex post facto EC.

- c The Circular dated 14-5-2002, allowed for ex post facto ECs, subject to a graded contribution into an earmarked fund based on the investment cost of the project. The Circular dated 14-5-2002 was challenged before the High Court. The proceedings were subsequently transferred to NGT. NGT by its decision dated 8-1-2016 held that the law did not permit the grant of an ex post facto clearances and that the Circular dated 14-5-2002 was an internal communication and did not override the provisions of the EIA Notification dated 27-1-1994 which had been issued in exercise of statutory powers conferred by Section 3 of the Environment (Protection) Act, 1986.

- d Having held that the concept of an “ex post facto environmental clearance” was not sustainable with reference to any provision of law, NGT issued directions that the authorities shall not grant consent for an industrial activity covered by the EIA Notification of 1994 without the steps mandated by the notification such as screening, scoping, public hearing and decision being fulfilled. All the industrial activities which were being operated without a valid EC and consent to operate directed to be closed down within one month. Each of the units directed to deposit a compensation of Rs 10 lakhs for having caused environmental degradation. The amount deposited was directed to be used for the restoration of the environment in and around the industrial area.

The order passed by NGT was challenged before the Supreme Court.

- e The appellants contended that the ex post facto clearance granted to them cannot be set aside by the order of NGT. Accordingly, no question of closing down the manufacturing units of the appellants can arise. The requirement of an ex post facto public hearing was introduced by an amendment in 1997 to the EIA Notification of 1994 and it is a valid procedure. In case, there is any violation of law, closure of industrial units cannot be ordered in view of significant investment and expansion undertaken by the industry. If the order of NGT prevails, the appellant would be prejudiced and suffer an irreparable loss. The appellants have employed large number of employees at its manufacturing unit.

- g The respondents contended that the Circular dated 14-5-2002 is illegal because environmental jurisprudence does not recognise any concept of ex post facto

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clearances. Any ex post facto approval is void and the benefit of the circular cannot be given to such an industry. The Circular dated 14-5-2002 does not mention its source or authority of law. The source of the circular is not traceable to Section 3 of the Environment (Protection) Act, 1986 because the circular does not protect or improve the quality of the environment. The circular allows defaulters to get ex post facto clearances and does not encourage compliance with the law. The Comprehensive Environmental Pollution Index Report by the Central Pollution Control Board indicates that the air, water and soil parameters in and around the industrial area where the industrial units are located, are among the most critical in India. Even if the Supreme Court were to hold that the closure of the industries should not be ordered, compensation should be directed to be paid by them for restoration of the environment. These industries have brazenly operated for years without environmental clearances.

The issues to be determined by the Supreme Court were:

(i) Whether in view of the requirement of a prior EC under the EIA Notification of 1994, a provision for an ex post facto EC to industrial units could be validly made by means of the Circular dated 14-5-2002,

(ii) Jurisdiction of NGT to strike down rules or regulations made under the Environment (Protection) Act, 1986,

(iii) Legality of revocation of ECs by NGT.

Held :

In view of the law laid down in *Sterlite Industries*, (2019) 19 SCC 479, while exercising its jurisdiction under Section 16 of the NGT Act, NGT cannot strike down rules or regulations made under the Environment (Protection) Act, 1986. However the Circular dated 14-5-2002 cannot be regarded as to have been issued by the MoEF pursuant to its powers under Section 3 of the Environment (Protection) Act, 1986. Because the Union of India has not pleaded the case that the Circular dated 14-5-2002 is a measure which is traceable to the provisions of Section 3. On the contrary, in its pleadings the Union of India construed it as a “purely administrative decision”. The omission in the appeal to make any attempt to sustain the Circular dated 14-5-2002 with reference to the provisions of Section 3 of the Environment (Protection) Act, 1986 is significant. For an action of the Central Government to be treated as a measure referable to Section 3 it must satisfy the statutory requirement of being necessary or expedient “for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environment pollution”. The Circular dated 14-5-2002 in fact does quite the contrary. It allowed defaulting industrial units which had commenced activities without an EC to cure the default by an ex post facto clearance. Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purpose of protecting and improving the quality of the environment. The circular notes that there were defaulting units which had failed to comply with the requirement of obtaining an EC as mandated. The circular provided for an extension of time and inexplicably introduced the notion of an ex post facto clearance. In effect, it impacted the obligation of the industrial units to be in compliance with the law. (Paras 18 to 21)

The concept of ex post facto clearance is fundamentally at odds with the EIA Notification dated 27-1-1994. The EIA Notification of 1994 contained a stipulation

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- a* that any expansion or modernisation of an activity or setting up of a new project listed in Schedule I “shall not be undertaken in any part of India unless it has been accorded environmental clearance”. The language of the notification is as clear as it can be to indicate that the requirement is of a prior EC. A mandatory provision requires complete compliance. The words “shall not be undertaken” read in conjunction with the expression “unless” can only have one meaning: before undertaking a new project or expanding or modernising an existing one, an EC must be obtained. When the EIA Notification of 1994 mandates a prior EC, it proscribes
- b* (command against) a post activity approval or an ex post facto permission. What is sought to be achieved by the administrative Circular dated 14-5-2002 is contrary to the statutory Notification dated 27-1-1994. The Circular dated 14-5-2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. Thus the administrative circular is not a measure protected by Section 3 of the 1986 Act. Hence there was
- c* no jurisdictional bar on NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law. (Paras 18 to 21)

T.N. Pollution Control Board v. Sterlite Industries (India) Ltd., (2019) 19 SCC 479, distinguished

BSNL v. TRAI, (2014) 3 SCC 222, referred to

- d* The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27-1-1994. It is detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC
- e* can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities
- f* without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development. (Paras 22 and 23)

Common Cause v. Union of India, (2017) 9 SCC 499, followed

- g* *M.C. Mehta v. Union of India*, (2004) 12 SCC 118, cited

- h* The additional measures adopted by the industries subsequently, such as the installation of latest pollution capturing technologies, recent consents from GPCB and certification of “zero discharge” units, will not cure the failure to obtain ECs before the projects commenced operation. These measures are simply to ensure compliance with the pollution standards and requirements of law that exist as of date. These measures have no bearing on determining whether the industrial units were in the past operating in compliance with the requisite environmental

standards. These measures cannot act as correctives for historical wrongs and cannot compensate for the damage already caused to the environment as a result of manufacturing activities which were carried on without ECs. (Para 26)

Plea that the EIA Notification of 1994 did not apply to their manufacturing units as they were covered by the exemption in terms of Clause 8 of the Explanatory Note, cannot be accepted because before the exemption contained in Clause 8 applies, it was necessary for projects listed in Schedule I to obtain all relevant clearances from the State Government including an NOC from the State Pollution Control Board. It was in other words not sufficient to merely obtain an NOC from the State Pollution Control Board. The exemption which was carved out in the Explanatory Note was to ensure that activities which had received all required clearances at the State level, following the acquisition of land should be protected. In fact, many of them would also involve the commencement of production prior to 27-1-1994. The Explanatory Note stated that where production had not yet commenced, the IAA would have to be intimated. In order to be covered within the scope of the exemption, the burden is on the industry to demonstrate that they fulfilled conditions spelt out in Clause 8 of the Explanatory Note. The EIA notification 1994 is a significant instrument in effectuating the implementation of the precautionary principle. The burden lies on the project proponent who seeks to alter the state of the environment or to impact on the environment to demonstrate that the terms on which an exemption has been granted have been fulfilled. An exemption must be construed in its strict sense according to its plain terms. None of the three industries before the Court have furnished an exhaustive catalogue of what were the “relevant clearances from the State Government” that had to be obtained under the provisions of the law as it then stood. (Paras 27 and 28)

There has been a gross abdication of responsibility by all the three industries in terms of obtaining timely consents and authorisations from the GPCB. There exists a distinction between obtaining relevant clearances and consents from the State Pollution Control Board and obtaining an environmental clearance in accordance with the procedure laid down under the EIA Notification of 1994. A consent order issued by the State Pollution Control Board allows an industry to operate within the prescribed emission norms. However, the consent orders do not account for the social cost and impact of undertaking an industrial activity on the environment and its surroundings. A holistic analysis of the environmental impact of an industrial activity is only accounted for once all the steps listed out in EIA Notification of 1994 are followed. The purpose of setting in place specific requirements such as public hearing, screening, scoping and appraisal is to foster deliberative decisions and protect environmental concerns. The detailed process listed out in the EIA Notification of 1994 for obtaining an EC allows for minimising the adverse environmental impact of any industrial activity and improving the quality of the environment. One must adopt an ecologically rational outlook towards development. Given the social and environmental impacts of an industrial activity, environment compliance must not be seen as an obstacle to development but as a measure towards achieving sustainable development and intergenerational equity. In that view of the matter none of the three industries were entitled to the benefit of the exemption contained in Clause 8 of the Explanatory Note to the EIA Notification of 1994. (Paras 35 and 36)

The industrial units in dispute have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation of the industrial units would be irreversible. However, to the extent

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- a* possible some of the damage can be corrected by undertaking measures to protect and conserve the environment. Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA Notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three industries have also obtained
- b* ECs for an expansion of capacity from time to time. Third, the MoEF had issued a circular on 5-11-1998 permitting applications for ECs to be filed by 31-3-1999, which was extended subsequently to 30-6-2001. On 14-5-2002, the deadline was extended until 31-3-2003 subject to a deposit commensurate to the investment made. (Paras 37 and 38)

Goa Foundation (1) v. Union of India, (2005) 11 SCC 559, referred to

- c* Though the industries in dispute operated without an EC for several years after the EIA Notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 2003. In addition, all the three units have made infrastructural investments and employed significant number of workers in their industrial units. In this backdrop and taking a balanced approach the directions of NGT for the revocation of the ECs and for closure of the units do not accord with the
- d* principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries in dispute have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such non-compliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by
- e* legal consequences. (Paras 41 and 42)

- The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by NGT, it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality
- f* of the environment in the industrial area in which the industries operate. (Para 42)

Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai, (2016) 9 SCC 300, relied on

Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338, distinguished on issue of ex post facto clearance but relied on for determining appropriate measure of restitution

Rohit Prajapati v. Union of India, Original Application No. 66 of 2015, order dated 8-1-2016 (NGT), partly reversed

- g* *Techi Tagi Tara v. Rajendra Singh Bhandari*, (2018) 11 SCC 734, cited

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- (2018) 11 SCC 734, *Techi Tagi Tara v. Rajendra Singh Bhandari* 170e
- (2017) 9 SCC 499, *Common Cause v. Union of India* 172a-b, 175b, 175c-d, 175f-g

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4. (2016) 9 SCC 300, *Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai* 171b-c, 187e-f, 187g
5. Original Application No. 66 of 2015, order dated 8-1-2016 (NGT), *Rohit Prajapati v. Union of India* (partly reversed) a 164b-c, 164g, 167f, 189b-c 172e-f
6. (2014) 3 SCC 222, *BSNL v. TRAI* 172e-f
7. (2011) 7 SCC 338, *Lafarge Umiam Mining (P) Ltd. v. Union of India* 171a-b, 186f, 186f-g, 187a, 187e
8. (2005) 11 SCC 559, *Goa Foundation (I) v. Union of India* 170g-h, 186f
9. (2004) 12 SCC 118, *M.C. Mehta v. Union of India* 175d-e b

The Judgment of the Court was delivered by

DR D.Y. CHANDRACHUD, J.— By a judgment dated 8-1-2016¹, the Bench of the National Green Tribunal (“NGT”) for the Western Zone held that a circular issued by the Union Ministry of Environment and Forests (“MoEF”) on 14-5-2002 is contrary to law. The circular envisaged the grant of ex post facto environmental clearances. NGT issued a slew of directions including the revocation of environmental clearances and for closing down industrial units operating without valid consents. On 17-5-2016, NGT dismissed an application for review filed by one of the affected industrial units. The industrial units and MoEF are in appeal². c

2. The Environmental Impact Assessment (“EIA”) Notification of 27-1-1994 mandated prior environmental clearances (“ECs”) for setting up and expansion of industrial projects falling within thirty categories. The deadline for obtaining an EC under the EIA Notification of 1994 was extended by various circulars to 31-3-1999 and thereafter to 30-6-2001. By the Circular dated 14-5-2002, which was quashed by NGT, MoEF extended the period till 31-3-2003 for those industrial units which had gone into production without obtaining an EC under the EIA Notification of 1994 to apply for and obtain an ex post facto EC. The Circular indicated that it had been decided: d

“... to extend the deadline up to 31-3-2003 so that defaulting units could avail of this last and final opportunity to obtain ex post facto environmental clearance....” e

3. The Circular dated 14-5-2002, allowed for ex post facto ECs, subject to a graded contribution into an earmarked fund based on the investment cost of the project. The first and the second respondents challenged the Circular dated 14-5-2002 before the High Court of Gujarat. The proceedings were subsequently transferred to NGT. NGT by its decision dated 8-1-2016¹ held that the law did not permit the grant of an ex post facto clearances and that the Circular dated 14-5-2002 was an internal communication and did not override f

1 *Rohit Prajapati v. Union of India*, Original Application No. 66 of 2015, order dated 8-1-2016 (NGT)

2 Civil Appeal No. 1526 of 2016 (*Alembic Pharmaceuticals Ltd.*); Civil Appeal No. 3175 of 2016 (*United Phosphorus Ltd.*); Civil Appeals Nos. 6604-605 of 2016 (*Unique Chemicals*); and Civil Appeal No. 42756 of 2016 (*Union of India*). g

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a the provisions of the EIA Notification dated 27-1-1994 which had been issued in exercise of statutory powers conferred by Section 3 of the Environment (Protection) Act, 1986.

4. Having held that the concept of an “ex post facto environmental clearance” was not sustainable with reference to any provision of law, NGT issued the following directions:

b 4.1. The authorities of the Union of India, including the MoEF, State of Gujarat, Gujarat Pollution Control Board (“GPCB”) and District Collectors shall not grant consent for an industrial activity covered by the EIA notification of 1994 without the steps mandated by the notification such as screening, scoping, public hearing and decision being fulfilled.

c 4.2. The ECs granted to the industrial units of the sixth to ninth respondents shall be revoked.

4.3. All the industrial activities which were being operated without a valid EC and consent to operate shall be closed down within one month.

4.4. Each of the units shall deposit a compensation of Rs 10 lakhs for having caused environmental degradation.

d 4.5. The amount deposited shall be used for the restoration of the environment in and around the industrial area of Ankleshwar in the State of Gujarat.

5. The private respondents before NGT who were affected by the above directions are:

- e (i) United Phosphorous Ltd. — the sixth respondent;
(ii) Unique Chemicals — the seventh respondent;
(iii) Darshak (P) Ltd. — the eighth respondent; and
(iv) Nirayu (P) Ltd. — the ninth respondent.

f The private respondents are engaged in the manufacture of pharmaceuticals and bulk drugs at the industrial area of Ankleshwar in the State of Gujarat. Alembic Pharmaceuticals Ltd. is the appellant in the lead appeal before this Court. Darshak Private Ltd. merged with the appellant in 2002 pursuant to a scheme of amalgamation sanctioned by the High Court of Gujarat. Nirayu Private Ltd. was acquired by the appellant under a slump sale on 1-1-2008.
g Following this exercise, the manufacturing units of erstwhile Darshak Private Ltd. and Nirayu Private Ltd. have come to be known as API-I and API-II, respectively.

EIA Notification of 1994

h 6. The EIA Notification was issued by the MoEF on 27-1-1994, in exercise of its powers under Section 3(1) and clause (v) of Section 3(2) of the

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Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986. The EIA notification stipulated that:

“... on and from the date of publication of this notification in the Official Gazette, expansion or modernisation of any activity (if pollution load is to exceed the existing one) or new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure hereinafter specified in this notification.”

7. The EIA notification stipulated that any person who desired to undertake a new project, or the expansion or modernisation of an existing industry, listed in Schedule I shall submit an application to the Secretary, MoEF. Entry 8 of Schedule I includes industries engaged in manufacturing bulk drugs and pharmaceuticals. The application had to be accompanied by a project report including, inter alia, an EIA report and an environmental management plan prepared in accordance with the guidelines issued by the Union Government through the MoEF from time to time. The notification spelt out the procedure to be followed upon the submission of the application including an evaluation and assessment by a stipulated agency. Clause 3(a) which was (substituted on 4-5-1994) provided that:

“... no construction work primarily or otherwise relating to the setting up of the project may be undertaken till the environmental and site clearances is obtained.”

8. On 10-4-1997, the EIA Notification of 1994 was amended by making a public hearing mandatory for thirty categories of activities which required an EC. On 5-11-1998, the MoEF issued a circular recording that though the EIA Notification of 1994 was in effect since 27-1-1994, units covered by the notification had been set up without obtaining prior ECs. The GPCB had despite the advice of the MoEF allowed units to operate without valid ECs. In this backdrop, the Circular dated 5-11-1998 provided that:

“Since number of such proposals are large in number and many of the units have not applied for environmental clearance genuinely out of ignorance it has been decided to consider their case for environmental clearance on merits. This will apply only to those proposals which are received in the Ministry till 31-3-1999. Simultaneously State Pollution Control Boards have also been advised to issue requisite notices to the units to apply for environmental clearance. In case of those units which have already started production, we may consider the proposals on merits and if necessary suggest additional mitigative measures. A formal environmental clearance will be issued in these cases after approval by the competent authority.”

9. By a Circular dated 27-12-2000, the MoEF directed all State Pollution Control Boards to issue fresh notices to all defaulting units and extended the deadline to obtain ECs from 31-3-1999 to 30-6-2001. In spite of this, there

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a were delinquent units which had either failed to apply for an EC or had failed to complete the requirement of a public hearing before the extended date. By the Circular dated 14-5-2002, the deadline was extended to 31-3-2003. The circular stated that:

b “Keeping the foregoing in view, it has been decided to extend the deadline up to 31-3-2003 so that defaulting units could avail of this last and final opportunity to obtain ex post facto environmental clearance. This would apply to all such units, which had commenced construction activities/operations without obtaining prior environmental clearance in violation of the EIA Notification of 27-1-1994.”

c **10.** In terms of the circular, those defaulting units seeking an expansion were to earmark a separate fund for “eco-development measures including community development measures in Indian projects areas” on a graded scale linked to the investment in the project. This was indicated in a tabulated form which read thus:

d	A	Projects with investment up to Rs 100 crores	1% of the project cost with a minimum of Rs 50,000
	B	Projects with investment beyond Rs 100 crores and up to Rs 1000 crores	0.5% of the project cost subject to a minimum of Rs 1 crore and a maximum of Rs 2.5 crores
	C	Projects with investment exceeding Rs 1000 crores	0.25% of the project cost subject to a maximum of Rs 5 crores

e Units which failed to comply with the extended deadline were to be proceeded against.

The challenge to the ex post facto Circular dated 14-5-2002

f **11.** A petition was instituted under Article 226 of the Constitution by the first and second respondents in the present lead appeal before the High Court of Gujarat challenging the Circular dated 14-5-2002 and seeking the revocation of the clearances which were granted to the industrial units in question. The case was transferred to the Western Zonal Bench of NGT by the High Court of Gujarat on 21-4-2015. NGT by its judgment dated 8-1-2016¹ set aside the Circular dated 14-5-2002 and issued consequential directions which have been noted in the earlier part of this judgment. Unique Chemicals Ltd., the seventh respondent before NGT, preferred a review petition against the judgment of NGT which was dismissed. The affected industrial units and the MoEF are in
g appeal before this Court.

12. The issue to be adjudicated is whether in view of the requirement of a prior EC under the EIA Notification of 1994, a provision for an ex post facto EC to industrial units could be validly made by means of the Circular dated 14-5-2002.

h ¹ *Rohit Prajapati v. Union of India*, Original Application No. 66 of 2015, order dated 8-1-2016 (NGT)

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13. During the course of the submissions, Mr Kapil Sibal, learned Senior Counsel appearing on behalf of Alembic Pharmaceuticals Ltd. has urged the following submissions:

13.1. The issue is academic as both the units of the appellant have been granted an EC for subsequent expansion to a much higher capacity after conducting a public hearing and upon consideration of all material factors. The relevant details in support of the submission are thus:

Darshak Private Ltd. (API-I)

(a) An EC was granted on 14-5-2003 for a capacity of 15 MT per month;

(b) An EC was granted on 16-4-2008 for expansion of capacity from 15 MT per month to 25 MT per month; and

(c) An EC was granted on 31-1-2017 for a further expansion of capacity from 25 to 75 MT per month.

Nirayu Private Ltd. (API-II)

(a) An EC was granted on 14-5-2003 for a capacity of 47 MT per month; and

(b) An EC was granted on 20-12-2016 for an expanded capacity of 300 MT per month.

13.2. The EIA Notification of 1994 omits the expression “prior”. This is contrasted with the EIA Notification dated 14-9-2006 which stipulates the requirement of a “prior” EC. While a prior EC is mandatory under the Notification dated 14-9-2006, it was not under the earlier Notification dated 27-1-1994.

13.3. Once an EC has been granted for a much larger capacity after conducting a prior public hearing, the question as to whether the first EC for a lesser capacity was valid, is of no significance. Since both the units have an EC for a larger capacity, the satisfaction for granting an EC for a lesser capacity would be subsumed.

13.4. The EIA Notification of 1994 did not apply to the two units of the appellant (API-I and API-II). Clause 8 of the Explanatory Note to the EIA Notification of 1994 provides that where a no-objection certificate (“NOC”) from GPCB has been obtained before 27-1-1994, an EC is not required. In this context it has been submitted that:

(a) On 17-7-1992, GPCB granted an NOC to establish and manufacture to the manufacturing unit of API-I;

(b) On 29-5-1997 and 27-7-1998, GPCB granted an authorisation to operate under the Air (Prevention and Control of Pollution) Act, 1981 (“the Air Act”) to API-I;

(c) On 11-10-1999, GPCB granted API-I an authorisation to operate under the Water (Prevention and Control of Pollution) Act, 1974 (“the Water Act”);

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- a* (d) On 24-5-1985, GPCB granted API-II a consent order under the Water Act;
- (e) On 9-10-1991, GPCB granted a site clearance certificate to API-II;
- (f) On 12-5-1993, GPCB granted an NOC to API-II to establish and for the manufacture of drugs;
- (g) On 23-9-1993 and 13-11-1999, GPCB granted a consent under the Water Act to API-II;
- b* (h) On 14-12-2001, GPCB granted an authorisation to API-II to operate under the Hazardous Waste (Management and Handling) Rules, 1989 (“the Hazardous Waste Rules”); and
- (i) On 1-9-1999, 14-12-2001 and 7-3-2008, GPCB granted a consolidated consent and authorisation to API-II.
- c* **13.5.** A public hearing was not mandatory under the EIA Notification of 1994. Clause 4 of the Explanatory Note confers a discretion to call for a hearing in case of projects that may cause large-scale displacement or with severe environmental ramifications.
- 13.6.** If the order of NGT prevails, the appellant would be prejudiced and suffer an irreparable loss. The appellant has made an investment of over Rs 293 crores and employed a labour force of over 1000 workers.
- d* **13.7.** The first respondent who was the petitioner before NGT chose to target only the appellant and two others out of over ninety different entities which were granted similar clearances. This cherry picking of certain select units demonstrates the mala fide nature of the proceedings.
- 14.** During the course of his submissions, Mr C.U. Singh, learned Senior Counsel appearing on behalf of United Phosphorus Ltd. has urged the following submissions:
- e* **14.1.** The Circular dated 5-11-1998, by which the deadline for obtaining ECs under the EIA Notification of 1994 was extended to 30-6-2001 was not challenged. The Circular dated 5-11-1998 specifically noted that the State Pollution Control Board had despite the advice of the MoEF allowed units to operate without valid ECs.
- f* **14.2.** United Phosphorus Ltd. had all requisite ECs that were granted by GPCB for the existing and expanded capacity. In this context it has been submitted:
- (a) An EC was granted on 17-7-2003 for manufacturing Phorate and Terbuphose (300 MT per month combined) and Acephate (80 MT per month);
- g* (b) An EC was granted on 15-4-2008 for the expansion of capacity for manufacturing pesticides and intermediate products. Production of Phorate and Terbuphose was increased from 300 MT per month to 500 MT per month, and production of Acephate was increased to 1000 MT per month;
- (c) An EC was granted on 10-1-2020 for an enhanced capacity of 9546 MT per month;
- h*

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14.3. The complainant, the first respondent in the lead appeal, attended the public hearing held on 16-1-2002 prior to the grant of an EC on 17-7-2003 and raised no objections. a

14.4. If the order of NGT prevails, the appellant would be prejudiced and suffer an irreparable loss. The appellant has employed approximately 400 permanent and contract workers at its manufacturing unit.

14.5. The challenge by the first and second respondents was to the EIA Notification 1994 which did not apply to the manufacturing unit of the appellant. At the relevant time, the appellant was exempted from obtaining an EC since it had all requisite permissions. In this context it has been submitted: b

(a) On 3-10-1992, GPCB granted an NOC to the appellant for setting up a manufacturing unit;

(b) On 17-11-1995 and 2-4-1996, GPCB granted NOCs for expansion and manufacturing additional products; c

(c) On 27-8-2009, GPCB granted a consolidated consent and authorisation to the appellant's manufacturing unit;

(d) On 25-7-2012, GPCB issued an NOC for the expansion of the appellant's manufacturing unit; and

(e) On 11-5-2015 and 27-5-2017, GPCB granted a consolidated consent and authorisation for expanded operations. d

15. Appearing for Unique Chemicals Ltd., Dr Abhishek Singhvi, learned Senior Counsel urged the following submissions:

15.1. NGT did not have the jurisdiction to entertain the petition filed by the first and second respondents in view of the decision of this Court in *Techi Tagi Tara v. Rajendra Singh Bhandari*³. e

15.2. The EC granted in 2007 superseded the earlier EC granted in 2002. Therefore, the question of validity of the earlier EC does not arise. In this context it has been submitted:

(a) An EC was granted on 23-12-2002 for a capacity of 78.02 MT per month for manufacturing bulk drugs and intermediates; f

(b) An EC was granted on 8-8-2007 for an increase in manufacturing capacity from 78.02 MT per month to 116.12 MT per month; and

(c) An EC was granted on 30-6-2018 for an increase in the manufacturing capacity to 290 MT per month. On 10-4-2019, the above EC was amended allowing an increase in the number of products permitted to be manufactured by the appellant. g

15.3. The ex post facto clearance granted to the appellant cannot be set aside by the order of NGT in terms of the decision of this Court in *Goa Foundation (1) v. Union of India*⁴, where 95 industrial projects were accorded ex post facto

³ (2018) 11 SCC 734

⁴ (2005) 11 SCC 559

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a clearances in terms of the Circular dated 14-5-2002. Accordingly, no question of closing down the manufacturing units of the appellants can arise.

15.4. The requirement of an ex post facto public hearing was introduced by an amendment in 1997 to the EIA Notification of 1994. The legality of an ex post facto public hearing has been upheld by this Court in *Lafarge Umiam Mining (P) Ltd. v. Union of India*⁵.

b **15.5.** In various cases where there has been a violation of law, this Court has not ordered the closure considering the significant investment and expansion undertaken by the industry. In *Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai*⁶, this Court did not order closure of the plant since a significant expansion had already taken place and the industry was functioning.

c **15.6.** If the order of NGT prevails, the appellant would be prejudiced and suffer an irreparable loss. The appellant has employed approximately 400 employees at its manufacturing unit.

15.7. The EIA Notification 1994 did not apply to the manufacturing unit of the appellant. The manufacturing unit of the appellant was exempt from obtaining an EC as it had all the requisite permissions. In this context it has been submitted:

d (a) On 30-9-1995, GPCB issued an “air consent order” under the Air Act;

(b) On 9-1-1996, GPCB issued an authorisation under the Hazardous Waste Rules;

(c) On 16-4-1996, GPCB issued a “water consent order” under the Water Act;

e (d) On 15-4-2009, GPCB granted a consolidated consent and authorisation to the manufacturing unit of the appellant;

(e) On 11-6-2010 and 26-6-2012, GPCB amended the consolidated consent and authorisation granted to the appellant on 13-4-2009;

f (f) On 30-5-2011, GPCB granted consent to set up a gas-based power generation plant having a capacity of 400 kW at the manufacturing unit of the appellant;

(g) On 2-11-2013, GPCB granted a fresh consolidated consent and authorisation to the manufacturing unit of the appellant; and

g (h) On 25-1-2019 and 25-10-2019, GPCB granted a fresh and revised consolidated consent and authorisation, respectively for an increase in the number of products permitted to be manufactured at the manufacturing unit of the appellant.

16. Appearing for the first and second respondents, Mr Siddharth Seem, learned counsel has urged the following submissions before this Court:

h 5 (2011) 7 SCC 338
6 (2016) 9 SCC 300

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16.1. The Circular dated 14-5-2002 is illegal because environmental jurisprudence does not recognise any concept of ex post facto clearances. Any ex post facto approval is void and the benefit of the circular cannot be given to such an industry. In this regard, reliance was placed upon the decision of this Court in *Common Cause v. Union of India*⁷.

a

16.2. The Circular dated 14-5-2002 does not mention its source or authority of law. The source of the circular is not traceable to Section 3 of the Environment (Protection) Act, 1986 because the circular does not protect or improve the quality of the environment. The circular allows defaulters to get ex post facto clearances and does not encourage compliance with the law.

b

16.3. The Comprehensive Environmental Pollution Index Report by the Central Pollution Control Board indicates that the air, water and soil parameters in and around the industrial area of Ankleshwar in the State of Gujarat, where the three industrial units are located, are among the most critical in India.

16.4. Even if this Court were to hold that the closure of the industries should not be ordered, compensation should be directed to be paid by them for restoration of the environment. These industries have brazenly operated for years without environmental clearances.

c

17. The rival submissions fall for our consideration.

18. We first address the challenge to the jurisdiction of NGT to strike down rules or regulations made under the Environment (Protection) Act, 1986. In *T.N. Pollution Control Board v. Sterlite Industries (India) Ltd.*⁸ (“*Sterlite*”) this Court analysed the adjudicatory functions which have been entrusted to NGT under the National Green Tribunal Act, 2010 (“the NGT Act”). R.F. Nariman, J. speaking for a two-Judge Bench held that while exercising its jurisdiction under Section 16, NGT cannot strike down rules or regulations made under the Environment (Protection) Act, 1986. In coming to this conclusion, the Court relied on the decision in *BSNL v. TRAI*⁹, where the appellate power contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997 (“the TRAI Act”) was interpreted. After advertent to this decision, R.F. Nariman, J. concluded that: (*T.N. Pollution Control Board case*⁸, SCC p. 524, para 43)

d

e

“43. ... NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country.”

f

19. While placing reliance on the above decision, Mr A.N.S. Nadkarni, learned Additional Solicitor General made an attempt to demonstrate that the power to issue the Circular dated 14-5-2002 that extended the deadline for defaulting units to avail of an ex post facto clearance until 30-3-2003 could well be traceable to Section 3 of the Environment (Protection) Act, 1986. Section 3, to the extent relevant, provides thus:

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“3. Power of Central Government to take measures to protect and improve environment.—(1) Subject to the provisions of this Act, the Central

⁷ (2017) 9 SCC 499

⁸ (2019) 19 SCC 479

⁹ (2014) 3 SCC 222

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a Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.”

b 20. Section 3(1) is an enabling provision for the Central Government to undertake all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. This limb of the submission of the Additional Solicitor General is crucial to the issue as to whether NGT has exceeded its jurisdiction since the decision in *Sterlite*⁸ holds that NGT, while exercising its appellate jurisdiction, “cannot strike down rules or regulations made *under this Act*”. In the present case, to demonstrate that NGT did not have the jurisdiction to strike down the Circular dated 14-5-2002, it was urged that
c the circular was issued by the MoEF pursuant to its powers under Section 3 of the Environment (Protection) Act, 1986. There is an inherent difficulty in accepting the submission. Before this Court, the Union of India has not pleaded the case that the Circular dated 14-5-2002 is a measure which is traceable to the provisions of Section 3. On the contrary, in its pleadings the Union of India
d construed it as a “purely administrative decision”. Ground (iii) in Para 3 of the memo of appeal states the position of the Union Government:

e “Because the Hon’ble Tribunal failed to appreciate that after the EIA Notification 1994 the opportunity to seek ex post facto environmental clearance was given to industries in background of far-reaching impact in terms of direct loss of livelihood of the employees working in the units which also supply inputs to other units and their indirect employment. *It was submitted to the Hon’ble High Court of Gujarat that issuance of Circular dated 14-5-2002, based on which environmental clearance was given, was purely an administrative decision before taking stringent action.*” (emphasis supplied)

f 21. The omission in the appeal to make any attempt to sustain the Circular dated 14-5-2002 with reference to the provisions of Section 3 of the Environment (Protection) Act, 1986 is significant. For an action of the Central Government to be treated as a measure referable to Section 3 it must satisfy the statutory requirement of being necessary or expedient “for the purpose of protecting and improving the quality of the environment and preventing,
g controlling and abating environment pollution”. The Circular dated 14-5-2002 in fact does quite the contrary. It purported to allow an extension of time for industrial units to comply with the requirement of an EC. The EIA Notification dated 27-1-1994 mandated that an EC has to be obtained before embarking on a new project or expanding or modernising an existing one. The EIA Notification of 1994 has been issued under the provisions of the Environment
h (Protection) Act, 1986 and the Environment Protection Rules, 1986, with the

8 *T.N. Pollution Control Board v. Sterlite Industries (India) Ltd.*, (2019) 19 SCC 479

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object of imposing restrictions and prohibitions on setting up of new projects or expansion or modernisation of existing project. The measures are based on the precautionary principle and aim to protect the interests of the environment. The Circular dated 14-5-2002 allowed defaulting industrial units which had commenced activities without an EC to cure the default by an ex post facto clearance. Being an administrative decision, it is beyond the scope of Section 3 and cannot be said to be a measure for the purpose of protecting and improving the quality of the environment. The circular notes that there were defaulting units which had failed to comply with the requirement of obtaining an EC as mandated. The circular provided for an extension of time and inexplicably introduced the notion of an ex post facto clearance. In effect, it impacted the obligation of the industrial units to be in compliance with the law. The concept of ex post facto clearance is fundamentally at odds with the EIA Notification dated 27-1-1994. The EIA Notification of 1994 contained a stipulation that any expansion or modernisation of an activity or setting up of a new project listed in Schedule I “shall not be undertaken in any part of India unless it has been accorded environmental clearance”. The language of the notification is as clear as it can be to indicate that the requirement is of a prior EC. A mandatory provision requires complete compliance. The words “shall not be undertaken” read in conjunction with the expression “unless” can only have one meaning: before undertaking a new project or expanding or modernising an existing one, an EC must be obtained. When the EIA Notification of 1994 mandates a prior EC, it proscribes a post activity approval or an ex post facto permission. What is sought to be achieved by the administrative Circular dated 14-5-2002 is contrary to the statutory Notification dated 27-1-1994. The Circular dated 14-5-2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. The EIA Notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA Notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative Circular dated 14-5-2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law.

22. Mr Kapil Sibal, learned Senior Counsel appearing on behalf of Alembic Pharmaceuticals Ltd. sought to urge that the EIA Notification dated 27-1-1994 contains an omission of the expression “prior” and contrasted this with the EIA Notification dated 14-9-2006 which stipulates the requirement of a “prior” EC. This, in his submission is an indicator that a prior EC is mandatory under the Notification dated 14-9-2006 but was not so under the earlier Notification dated 27-1-1994. This interpretation was not supported by Mr A.N.S. Nadkarni, learned Additional Solicitor General who categorically submitted that the

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a requirement under the Notification dated 27-1-1994 was of a prior EC. We are unable to accept the submission of Mr Kapil Sibal.

b **22.1.** The terms of the EIA Notification dated 27-1-1994 leave no manner of doubt that a prior EC was mandated before a new project was commenced or before undertaking any expansion or modernisation of an existing project. The absence of the expression “prior” in the EIA Notification dated 27-1-1994 makes no difference since the words “shall not be undertaken ... unless” postulate the requirement of a prior EC. Speaking for a two-Judge Bench of this Court in *Common Cause v. Union of India*⁷ (“*Common Cause*”), Madan B. Lokur, J. rejected the submission which was urged on behalf of mining leaseholders that: (SCC p. 549, para 108)

c “108. ... the possibility of getting an ex post facto EC was a signal to the mining leaseholders that obtaining an EC was not mandatory or that if it was not obtained, the default was retrospectively condonable.”

22.2. Disagreeing with the submission, the Court held: (*Common Cause case*⁷, SCC p. 553, para 125)

d “125. We are not in agreement with the learned counsel for the mining leaseholders. *There is no doubt that the grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and reasonable care since damage to the environment can have a long-term impact. EIA 1994 is therefore very clear that if expansion or modernisation of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in M.C. Mehta*¹⁰ *even for the renewal of a mining lease where there is no expansion or modernisation of any activity, a prior EC is necessary. Such importance having been given to an EC, the grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant.*” (emphasis supplied)

g **23.** The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA Notification dated 27-1-1994. It is, as the judgment in *Common Cause*⁷ holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed. Requirements such as conducting a public hearing, screening,

h ⁷ (2017) 9 SCC 499

¹⁰ *M.C. Mehta v. Union of India*, (2004) 12 SCC 118

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scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.

24. In order to enable the Court to assess the status of compliance, the material which has been produced on the record by: (i) Alembic Pharmaceuticals Ltd.; (ii) United Phosphorous Ltd.; and (iii) Unique Chemicals Ltd. has been compiled in a tabulated form for each of the three industries. For Alembic Pharmaceuticals Ltd., the data for its two industrial units — Darshak Private Ltd. (API-I) and Nirayu Private Ltd. (API-II) — has been analysed separately. For each of the three industries, Table A below consists of the list of permissions, consents and authorisations obtained by the industry from various authorities. Table B contains a list of ECs which were granted from time to time to each industrial unit. The position as tabulated below is based on the material which has been disclosed on the record of these proceedings:

<i>Table A: List of permissions, consents and authorisations granted to Alembic Pharmaceuticals Ltd.</i>	
<i>Darshak (API-I)</i>	
<i>Date</i>	<i>Permission/Consent/Authorisation Granted</i>
17-7-1992	GPCB issued a no-objection certificate to establish an industrial unit for the manufacture of the following items at API-I: (i) Ciprofloxacin (1.25 MT pm); and (ii) Norfloxacin (2.5 MT pm)
11-6-1997	GPCB granted no-objection certificate for manufacturing additional items at API-I
29-5-1997	GPCB issued air consent order authorising to operate API-I
11-7-1997, 12-7-1997 and 27-7-1998	GPCB granted no-objection certificate for manufacturing of additional items at API-I
31-3-1999	GPCB issued air consent order authorising to operate API-I
11-10-1999	GPCB issued water consent order authorising to operate API-I
Between 27-9-2002 — 23-12-2011	GPCB issued various consents under the Air Act, Water Act and Hazardous Waste Rules.
<i>Nirayu Private Ltd. (API-II)</i>	
<i>Date</i>	<i>Permission/Consent/Authorisation Granted</i>
12-7-1984	Factory licence was issued in favour of Nirayu Private Ltd.
24-5-1985	GPCB issued water consent order authorising to operate API-II
9-10-1991	GPCB issued a site clearance certificate to establish an industrial unit and manufacture the following items at API-II: (i) CIMC chloride (2000 kg pm); and (ii) Cloxacillin sodium (500 kg pm)

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a	12-5-1993	GPCB granted a no-objection certificate to establish an industrial unit and manufacture the following items: (i) Acetone thiosemicarbazone (2 MT pm); (ii) 2 Mercapta (5 MT pm); (iii) Methoxy orthoxymethyl chloride (0.3 MT pm); and (iv) Solvent ether (7 MT pm)
	1-9-1993	GPCB issued authorisation to operate API-II under the Hazardous Waste Rules
b	23-9-1993	GPCB issued water consent order authorising to operate API-II
	4-12-1995	GPCB granted no-objection certificate for manufacturing additional items at API-II
c	4-10-1996 and 17-4-1998	GPCB issued air consent order to operate API-II
	1-9-1999	GPCB granted consolidated consent and authorisation to operate API-II
	12-11-1999	GPCB issued water consent order to operate API-II
	14-12-2001	GPCB issued authorisation to operate API-II under the Hazardous Waste Rules
	Between 27-9-2002 — 6-1-2015	GPCB issued various consents under the Air Act, Water Act and Hazardous Waste Rules.

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Table B: List of environmental clearances granted to Alembic Pharmaceuticals Ltd.			
Darshak (API-I)			
Date of Application	Date of Public Hearing	EC for Expansion (Quantity)	Date EC Granted
e	21-7-2001	30-1-2002	Manufacturing of various bulk drugs and intermediate products with a total capacity of 15 MT pm
f	8-12-2006	9-10-2007	Expansion of total capacity of bulk drugs from 15 to 25 MT pm
	16-9-2015	12-6-2015	Expansion of total capacity of active pharmaceutical ingredients from 25 to 75 MT pm
Nirayu Private Ltd. (API-II)			
Date of Application	Date of Public Hearing	EC for Expansion (Quantity)	Date EC Granted
g	20-7-2001	30-1-2002	Manufacturing of various bulk drugs and intermediate products

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		with a total capacity of 47 MT pm	
28-3-2016	12-6-2015	Expansion of total capacity of active pharmaceutical ingredients and intermediates from 47 to 300 MT pm	20-12-2016 as per the 2006 EIA notification

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Table A: List of permissions, consents and authorisations granted to United Phosphorus Ltd. Unit No. 2 — Plots Nos. 3405 and 3406	
Date	Permission/Consent/Authorisation Granted
31-1-1992	Gujarat Industrial Development Corporation granted land to the appellant to establish and run Unit No. 2
9-3-1992	GPCB issued no-objection certificate for operation of Unit No. 2 in relation to manufacturing of various products
3-10-1992	GPCB issued no-objection certificate to set up a unit to manufacture the following items at Unit No. 2: (i) Carbendazim; (ii) Quinalphos; and (iii) Paraquat
1993	Unit No. 2 commenced manufacturing activities
17-11-1995	GPCB granted no-objection certificate for expansion of Unit No. 2 for manufacturing of two additional products — Phorate and Terbuphose (300 MT pm combined)
2-4-1996	GPCB granted no-objection certificate for expansion of Unit No. 2 for the manufacture of Acephate (80 MT per month)
27-8-2009	GPCB granted a consolidated consent and authorisation to Unit No. 2
25-7-2012	GPCB issued consent to establish (NOC) for expansion of Unit No. 2
11-5-2015 and 27-4-2017	GPCB granted a consolidated consent and authorisation for the expanded operations

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Table B: List of environmental clearances granted to United Phosphorus Ltd. Unit No. 2 — Plots Nos. 3405 and 3406			
Date of Application	Date of Public Hearing	EC for Expansion (Quantity)	Date EC Granted
21-8-2002	16-1-2002	Manufacturing of Phorate and Terbuphose (300 MT pm combined) and Acephate (80 MT per month)	17-7-2003 as per EIA Notification of 1994
20-10-2007	-	Expansion of pesticides and intermediate	15-4-2008 as per EIA Notification of 2006

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<i>a</i>		products — Production of Phorate and Terbuphose to be increased to 500 MT pm combined — Production of Acephate to be increased to 1000 MT pm	
<i>b</i>	-	Enhanced capacity of 9546 MT per month (as per written submissions)	10-1-2020 as per EIA Notification of 2006

<i>c</i>	<i>Table A: List of permissions, consents and authorisations granted to Unique Chemicals Ltd.</i>		
	<i>Unit at Plot No. 5</i>		
	<i>Date</i>	<i>Permission/Consent/Authorisation Granted</i>	
	14-8-1995	GPCB issued a no-objection certificate to establish and run a unit (site clearance) at Plot No. 5	
<i>d</i>	30-9-1995	GPCB issued air consent order authorising to operate unit at Plot No. 5	
	25-12-1995	GPCB issued a no-objection certificate to set up and manufacture the following items at the unit at Plot No. 5: (i) Dichlotofenane sodium (6 MT pm); (ii) Nifedipine (2 MT pm); (iii) Indolinone (6.9 MT pm); and (iv) Pefloxacin (3 MT pm)	
<i>e</i>	9-1-1996	GPCB issued authorisation under the Hazardous Waste Rules	
	16-4-1996	GPCB issued water consent order authorising to operate unit at Plot No. 5	
	24-4-1996	Unit at Plot No. 5 commenced manufacturing activities	
	15-4-2009	GPCB granted a consolidated consent and authorisation to the unit at Plot No. 5	
<i>f</i>	11-6-2010 and 26-6-2012	GPCB amended the consolidated consent and authorisation to the unit at Plot No. 5 granted on 15-4-2009	
	30-5-2011	GPCB granted no-objection certificate to set up a gas-based power generation plant of a capacity of 400 kW at the unit at Plot No. 5	
	2-11-2013	GPCB granted a fresh consolidated consent and authorisation to the unit at Plot No. 5 for manufacturing of bulk drugs and intermediates	
<i>g</i>	1-7-2016	The appellant was certified as a zero liquid discharge unit	
	25-1-2019	GPCB granted a new consolidated consent and authorisation to the unit at Plot No. 5	
	25-10-2019	GPCB issued a revised consolidated consent and authorisation for increase in the number of products that were permitted to be manufactured at the unit at Plot No. 5	

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<i>Table B: List of environmental clearances granted to Unique Chemicals Ltd.</i>			
<i>Unit at Plot No. 5</i>			
<i>Date of Application</i>	<i>Date of Public Hearing</i>	<i>EC for Expansion (Quantity)</i>	<i>Date EC Granted</i>
30-6-2001	25-1-2002	Total capacity 78.02 MT pm of bulk drugs and intermediates. Manufacturing of: (i) Diclofenac sodium intermediates and derivatives (40 MT pm); (ii) Nifedipine and its intermediates (2 MT pm); (iii) Indelinone (7 MT pm); (iv) Pefloxacin and its intermediates (3 MT pm); (v) 2 methyl imldazole (15 MT pm); (vi) Phentolamine HCL (10 MT pm); (vii) Diltazem HCL (1 MT pm); and (viii) other co-products	23-12-2002 as per EIA Notification 1994
12-1-2007	Exempt — proposed project located in notified industrial area	For an increase in manufacturing of bulk drugs and intermediates from a total capacity from 78.02 MT pm to 116.12 MT pm. For an increase in manufacturing of co-products from a total capacity of 103 MT pm to 297 MT pm. For setting up a captive power plant with 1.3 MW capacity.	8-8-2007 as per EIA Notification 2006
16-3-2018	Exempt — proposed project located in notified industrial area	For an increase in manufacturing of bulk drugs and intermediates from a total capacity from 78.02 MT pm to 290 MT pm by setting up of synthetic	30-6-2018 as per EIA Notification 2006

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a			organic chemicals manufacturing plant	
b			Amendment to the EC dated 30-6-2018 increasing the number of products permitted to be manufactured by the appellant at the unit at Plot No. 5	10-4-2019 as per the 2006 EIA notification

25. The position that emerges from the record is that in the case of all the three industries, ECs were applied for nearly a decade after the introduction of the EIA Notification 1994. In the meantime, the industries had been set up and had commenced production. GPCB issued a notice to United Phosphorus Ltd. on 30-4-2001 directing them to apply for an EC. On 9-12-2000, GPCB issued a notice to Darshak Private Ltd. (API-I) and Nirayu Private Ltd. (API-II) directing them to apply for and obtain an EC in accordance with the EIA Notification of 1994. Darshak Private Ltd. (API-I) of Alembic Pharmaceuticals Ltd., applied for an EC on 21-7-2001 which it was granted on 14-5-2003. Subsequent applications for expansion of capacity were submitted on 8-12-2006 and 16-9-2015 for which ECs were granted on 16-4-2008 and 31-1-2017, respectively. Nirayu Private Ltd. (API-II), initially applied for an EC on 20-7-2001 and the EC was granted on 14-5-2003. The application for the grant of an EC for an extended capacity was submitted on 28-3-2016 and the EC was granted on 20-12-2016. In the case of United Phosphorous Ltd., the initial EC was sought on 21-8-2002 and it was granted on 17-7-2003. An application for expansion of capacity was submitted on 20-10-2007 and it was granted on 15-4-2008. An EC for the further expansion of capacity was granted on 10-1-2020. In the case of Unique Chemicals Ltd., the initial application for an EC was submitted on 30-6-2001 and it was granted on 23-12-2002. Subsequent applications for expansion in capacity were submitted on 12-1-2007 and 16-3-2018 for which ECs were granted on 8-8-2017 and 30-6-2018, respectively. An amendment to the EC dated 30-6-2018 was granted on 10-4-2019. The documents disclosed by the three industries demonstrate that no ECs as mandated by the EIA Notification of 1994 were sought before the commencement or expansion of operations. The terms of the EIA Notification of 1994 envisage that expansion or modernisation of any activity (if the pollution load is to exceed the existing one) or a new project listed in Schedule I shall not be undertaken unless it has been granted an EC. In the present case, all the three industries continued to operate in the teeth of the EIA Notification 1994.
26. The learned counsel appearing for the three industries have relied on a range of additional measures adopted, such as the installation of latest pollution capturing technologies, recent consents from GPCB and certification of “zero

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discharge” units. These measures adopted subsequently will not cure the failure to obtain ECs before the projects commenced operation. These measures are simply to ensure compliance with the pollution standards and requirements of law that exist as of date. These submissions have no bearing on determining whether the industrial units were in the past operating in compliance with the requisite environmental standards. These measures cannot act as correctives for historical wrongs and cannot compensate for the damage already caused to the environment as a result of manufacturing activities which were carried on without ECs.

27. The learned counsel for the three industries urged that the EIA Notification of 1994 did not apply to their manufacturing units as they were covered by the exemption in terms of Clause 8 of the Explanatory Note. The issue which needs to be considered is whether the industries were covered by the exemption and were not required to obtain ECs. Clause 8 of the Explanatory Note to the EIA Notification of 1994 states thus:

“8. Exemption for projects already initiated

For projects listed in Schedule I to the notification in respect of which the required land has been acquired and all relevant clearances of the State Government including NOC from the respective State Pollution Control Board have been obtained before 27-1-1994, a project proponent will not be required to seek environmental clearance from the IAA. However, those units who have not as yet commenced production will inform the IAA.”

28. Before the exemption contained in Clause 8 applies, it was necessary for projects listed in Schedule I to obtain all relevant clearances from the State Government including an NOC from the State Pollution Control Board. It was in other words not sufficient to merely obtain an NOC from the State Pollution Control Board. The exemption which was carved out in the Explanatory Note was to ensure that activities which had received all required clearances at the State level, following the acquisition of land should be protected. In fact, many of them would also involve the commencement of production prior to 27-1-1994. The Explanatory Note stated that where production had not yet commenced, the IAA would have to be intimated. In order to be covered within the scope of the exemption, the burden is on the industry to demonstrate before this Court that they fulfilled conditions spelt out in Clause 8 of the Explanatory Note. The EIA Notification 1994 is a significant instrument in effectuating the implementation of the precautionary principle. The burden lies on the project proponent who seeks to alter the state of the environment or to impact on the environment to demonstrate that the terms on which an exemption has been granted have been fulfilled. An exemption must be construed in its strict sense according to its plain terms. None of the three industries before the Court have furnished an exhaustive catalogue of what were the “relevant clearances from the State Government” that had to be obtained under the provisions of the law as it then stood.

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29. With this background, we will now assess individually whether the industries in question qualified for the exemption provided by Clause 8 of the Explanatory Note.

1. Alembic Pharmaceuticals Ltd.

(i) Darshak Private Ltd. (API-I)

30. The material produced on the record indicates that on 17-7-1992, GPCB had issued an NOC to establish an industrial unit and manufacture two pharmaceuticals products. However, the NOC for manufacturing additional items was issued only on 11-6-1997 subsequent to the EIA Notification dated 27-1-1994. The NOC dated 17-7-1992 issued by GPCB clearly states:

“We would like to inform you that the proposed location for this industrial plant is acceptable to us *provided that you will implement the following measure for the prevention and control of environmental pollution:*

(A)-(C) * * *

(D) Adequate arrangement for the management and handling of hazardous waste shall be made:

IMPORTANT NOTE

(1)-(2) * * *

(3) The applicant/entrepreneur *shall be required to obtain the following from the Board prior to commencement of production:*

(a) Consent under the Water (Prevention and Control of Pollution) Act, 1974.

(b) Consent under the Air (Prevention and Control of Pollution) Act, 1981.

(c) Authorisation under the Hazardous Waste (Management and Handling) Rules, 1989 under the Environment (Protection) Act, 1986.” (emphasis supplied)

31. GPCB while granting the NOC to establish an industrial unit required the project proponent to undertake certain measures for the prevention and control of environmental pollution including installation of treatment plants, discharge of effluents within prescribed limits and the creation of a green belt around the industrial unit. One of the points under the “Important Note” states that the project proponent “shall be required to obtain” from the Board “prior to commencement of production” requisite consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules. The language used in the NOC makes it clear that obtaining consents and authorisations under various environment related legislations was a mandatory precondition and not merely directory. In the present case, the authorisation under the Air Act was issued only on 29-5-1997 and 31-3-1999. The authorisation under the Water Act was issued on 11-10-1999. Clause 8 of the Explanatory Note states that for the exemption to apply, it was necessary for projects listed in Schedule I to have

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obtained all relevant clearances from the State Government including an NOC from the State Pollution Control Board. The evidence produced on the record by Darshak Private Ltd. indicates that it did not have the requisite consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules prior to the EIA Notification 1994. Many of the consents and permissions were obtained subsequently and not prior to the EIA Notification of 1994. Accordingly, the manufacturing unit of Darshak Private Ltd. (API-I) is not covered under the exemption under Clause 8 of the Explanatory Note to the EIA Notification of 1994.

(ii) Nirayu Private Ltd. (API-II)

32. A factory licence was issued on 12-7-1984 to API-II. On 24-5-1985, GPCB issued a water consent order under the Water Act. This was valid only for the manufacture of anaesthetic Ether. GPCB issued a site clearance certificate on 9-10-1991 for the manufacture of CIMC Chloride and Cloxacillin Sodium. An NOC to establish an industrial unit and to manufacture products was issued on 12-5-1993 and one for expansion on 4-12-1995. It is relevant to note that the NOC dated 12-5-1993 issued by GPCB to Nirayu Private Ltd. (API-II) is worded in exactly the same manner as the NOC dated 17-7-1992 issued to Darshak Private Ltd. (API-I). The NOC dated 12-5-1993 issued to Nirayu Private Ltd. (API-II) also mandates that the project proponent “shall be required to obtain” from the Board “prior to commencement of production” requisite consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules from GPCB. In the case of Nirayu Private Ltd. (API-II), authorisation under the Hazardous Waste Rules was issued on 1-9-1993. Consent to operate API-II under the Water Act was issued on 12-11-1999. GPCB issued consolidate consent and authorisation to operate API-II on 14-12-2010. From the above narration which is based on the disclosures made by Nirayu Private Ltd., it is evident that all consents and permissions had not been obtained prior to the EIA Notification of 1994. Accordingly, the manufacturing unit of Nirayu Private Ltd. (API-II) is not covered under the exemption under Clause 8 of the Explanatory Note to the EIA Notification of 1994.

2. United Phosphorous Ltd.

33. On 31-1-1992, Gujarat Industrial Development Corporation granted land to the appellant to establish and run its unit. On 9-3-1992 and 3-10-1992, GPCB issued an NOC for the operation of the unit. The unit commenced manufacturing in 1993. It is relevant to note that the NOC dated 3-10-1993 also mandates that the project proponent “shall be required to obtain” from the GPCB “prior to commencement of production” requisite consents and authorisations under the Air Act, Water Act and Hazardous Waste Rules. United Phosphorous Ltd. has not disclosed the dates on which it received authorisations under the relevant environmental legislation. It has placed on record a consolidated consent and authorisation that was issued much later on

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a 27-8-2009 under the Air Act, Water Act and Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008. The disclosures which have been made are patently incomplete. No material has been produced to indicate that all relevant clearances from the State Government including the NOC from GPCB had been obtained prior to the EIA Notification 1994. Accordingly, they cannot be granted the benefit of the exemption under Clause 8 of the Explanatory Note to the EIA Notification of 1994.

b **3. Unique Chemicals Ltd.**

c **34.** The material produced on the record indicates that GPCB issued an NOC to establish and run the manufacturing unit on 14-8-1995. It is evident from the Table enlisting the list of relevant permissions, consents and authorisations that all permissions were received after the EIA Notification 1994 was issued. Clearly, Unique Chemicals Ltd. is not entitled to the benefit of the exemption contained in Clause 8 of the Explanatory Note to the EIA Notification 1994.

d **35.** From the material placed on the record by the industries, it becomes evident that there has been a gross abdication of responsibility by all the three industries in terms of obtaining timely consents and authorisations from the GPCB. There exists a distinction between obtaining relevant clearances and consents from the State Pollution Control Board and obtaining an environmental clearance in accordance with the procedure laid down under the EIA Notification of 1994. A consent order issued by the State Pollution Control Board allows an industry to operate within the prescribed emission norms. e However, the consent orders do not account for the social cost and impact of undertaking an industrial activity on the environment and its surroundings. A holistic analysis of the environmental impact of an industrial activity is only accounted for once all the steps listed out in EIA Notification of 1994 are followed. The purpose of setting in place specific requirements such as public hearing, screening, scoping and appraisal is to foster deliberative decisions and protect environmental concerns. The detailed process listed out in the EIA Notification of 1994 for obtaining an EC allows for minimising the adverse environmental impact of any industrial activity and improving the quality of the environment. One must adopt an ecologically rational outlook towards development. Given the social and environmental impacts of an industrial activity, environment compliance must not be seen as an obstacle to development but as a measure towards achieving sustainable development and intergenerational equity. f g

36. We have therefore come to the conclusion that none of the three industries were entitled to the benefit of the exemption contained in Clause 8 of the Explanatory Note to the EIA Notification of 1994.

h **37.** The issue which must now concern the Court is the consequence which will emanate from the failure of the three industries to obtain their ECs

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until 14-5-2003 in the case of Alembic Pharmaceuticals Ltd., 17-7-2003 in the case of United Phosphorous Ltd., and 23-12-2002 in the case of Unique Chemicals Ltd. The functioning of the factories of all three industries without a valid EC would have had an adverse impact on the environment, ecology and biodiversity in the area where they are located. The Comprehensive Environmental Pollution Index (“CEPI”) Report issued by the Central Pollution Control Board for 2009-2010 describes the environmental quality at 88 locations across the country. Ankleshwar in the State of Gujarat, where the three industries are located showed critical levels of pollution¹¹. In the Interim Assessment of CEPI for 2011, the Report indicates similar critical figures¹² of pollution in the Ankleshwar area. The CEPI scores for 2013¹³ and 2018¹⁴ were also significantly high. This is an indication that industrial units have been operating in an unregulated manner and in defiance of the law. Some of the environmental damage caused by the operation of the industrial units would be irreversible. However, to the extent possible some of the damage can be corrected by undertaking measures to protect and conserve the environment.

38. Even though it is not possible to individually determine the exact extent of the damage caused to the environment by the three industries, several circumstances must weigh with the Court in determining the appropriate measure of restitution. First, it is not in dispute that all the three industries did obtain ECs, though this was several years after the EIA Notification of 1994 and the commencement of production. Second, subsequent to the grant of the ECs, the manufacturing units of all the three industries have also obtained ECs for an expansion of capacity from time to time. Third, the MoEF had issued a Circular on 5-11-1998 permitting applications for ECs to be filed by 31-3-1999, which was extended subsequently to 30-6-2001. On 14-5-2002, the deadline was extended until 31-3-2003 subject to a deposit commensurate to the investment made. The circulars issued by the MoEF extending time for obtaining ECs came to the notice of this Court in *Goa Foundation (I) v. Union of India*⁴. Fourth, though in the context of the facts of the case, this Court in *Lafarge Umiam Mining (P) Ltd. v. Union of India*⁵ (“Lafarge”) has upheld the decision to grant ex post facto clearances with respect to limestone mining projects in the State of Meghalaya. In *Lafarge*⁵, the Court dealt with the question of whether ex post facto clearances stood vitiated by alleged suppression of the nature of the land by the project proponent and whether there was non-application of mind by the MoEF while granting the clearances. While upholding the ex post facto clearances, the Court held that the native tribals were involved in the decision-making process and that the MoEF had

11 CEPI score — 88.50

12 CEPI score — 85.75

13 CEPI score — 80.93

14 CEPI score — 80.21

4 (2005) 11 SCC 559

5 (2011) 7 SCC 338

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a adopted a due diligence approach in reassuring itself through reports regarding the environmental impact of the project. S.H. Kapadia, C.J. speaking for the three-Judge Bench observed: [*Lafarge Umiam Mining (P) Ltd. case*⁵, SCC p. 380, para 119]

b “119. The time has come for us to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilisation of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that the decision-maker has taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play.” (emphasis supplied)

e 39. After advertent to the decision in *Lafarge*⁵, another Bench of three learned Judges of this Court in *Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai*⁶, dealt with the issue of whether an EC granted for expansion to the appellant without holding a public hearing was valid in law. Uday Umesh Lalit, J. speaking for the Bench held thus: (*Electrotherm case*⁶, SCC p. 312, para 19)

f “19. ... the decision-making process in doing away with or in granting exemption from public consultation/public hearing, was not based on correct principles and as such the decision was invalid and improper.”

g 40. The Court while deciding the consequence of granting an EC without public hearing did not direct closure of the appellant’s unit and instead held thus: (*Electrotherm case*⁶, SCC p. 312, para 20)

h “20. At the same time, we cannot lose sight of the fact that in pursuance of environmental clearance dated 27-1-2010, the expansion of the project has been undertaken and as reported by CPCB in its affidavit filed on 7-7-2014, most of the recommendations made by CPCB are complied with. In our considered view, the interest of justice would be

5 *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338

6 *Electrotherm (India) Ltd. v. Patel Vipulkumar Ramjibhai*, (2016) 9 SCC 300

subversed if that part of the decision exempting public consultation/public hearing is set aside and the matter is relegated back to the authorities concerned to effectuate public consultation/public hearing. *However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court.* If the public consultation/public hearing results in a negative mandate against the expansion of the project, the authorities would do well to direct and ensure scaling down of the activities to the level that was permitted by environmental clearance dated 20-2-2008. If public consultation/public hearing reflects in favour of the expansion of the project, environmental clearance dated 27-1-2010 would hold good and be fully operative. *In other words, at this length of time when the expansion has already been undertaken, in the peculiar facts of this case and in order to meet ends of justice, we deem it appropriate to change the nature of requirement of public consultation/public hearing from pre-decisional to post-decisional. The public consultation/public hearing shall be organised by the authorities concerned in three months from today.*" (emphasis supplied)

41. Guided by the precepts that emerge from the above decisions, this Court has taken note of the fact that though the three industries operated without an EC for several years after the EIA Notification of 1994, each of them had subsequently received ECs including amended ECs for expansion of existing capacities. These ECs have been operational since 14-5-2003 (in the case of Alembic Pharmaceuticals Ltd.), 17-7-2003 (in the case of United Phosphorous Ltd.), and 23-12-2002 (in the case of Unique Chemicals Ltd.). In addition, all the three units have made infrastructural investments and employed significant numbers of workers in their industrial units.

42. In this backdrop, this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of NGT for the revocation of the ECs and for closure of the units do not accord with the principle of proportionality. At the same time, the Court cannot be oblivious to the environmental degradation caused by all three industries units that operated without valid ECs. The three industries have evaded the legally binding regime of obtaining ECs. They cannot escape the liability incurred on account of such non-compliance. Penalties must be imposed for the disobedience with a binding legal regime. The breach by the industries cannot be left unattended by legal consequences. The amount should be used for the purpose of restitution and restoration of the environment. Instead and in place of the directions issued by NGT, we are of the view that it would be in the interests of justice to direct the three industries to deposit compensation quantified at Rs 10 crores each. The amount shall be deposited with GPCB and it shall be duly utilised for restoration and remedial measures to improve the quality of the environment in the industrial area in which the industries operate.

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- 43.** Though we have come to the conclusion, for the reasons indicated, that
- a* the direction for the revocation of the ECs and the closure of the industries was not warranted, we have issued the order for payment of compensation as a facet of preserving the environment in accordance with the precautionary principle. These directions are issued under Article 142 of the Constitution. Alembic Pharmaceuticals Ltd., United Phosphorous Ltd. and Unique Chemicals Ltd. shall deposit the amount of compensation with GPCB within a period of four
 - b* months from the date of receipt of the certified copy of this judgment. This deposit shall be in addition to the amount directed by NGT. Subject to the deposit of the aforesaid amount and for the reasons indicated, we allow the appeals and set aside the impugned judgment of NGT dated 8-1-2016¹ insofar as it directed the revocation of the ECs and closure of the industries as well as the order in review dated 17-5-2016. Pending application(s), if any, shall stand
 - c* disposed of.

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¹ *Rohit Prajapati v. Union of India*, Original Application No. 66 of 2015, order dated 8-1-2016 (NGT)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 5041 of 2021
(Arising out of SLP (C) No. 11959 of 2014)

Supertech Limited

...Appellant

Versus

**Emerald Court Owner Resident
Welfare Association & Ors.**

...Respondents

With

Civil Appeal No. 5042 of 2021
(Arising out of SLP (C) No. 14314 of 2014)

With

Civil Appeal No. 5043 of 2021
(Arising out of SLP (C) No. 12470 of 2014)

With

Civil Appeal No. 5044 of 2021
(Arising out of SLP (C) No. 14262 of 2014)

With

Civil Appeal No. 5045 of 2021
(Arising out of SLP (C) No. 21035 of 2014)

With

Civil Appeal No. 5046 of 2021
(Arising out of SLP (C) No. 31117 of 2014)

With

Civil Appeal No. 5047 of 2021
(Arising out of SLP (C) No. 12427 of 2015)

With
Civil Appeal No. 5048 of 2021
(Arising out of SLP (C) No. 12947 of 2015)
With
Civil Appeal No. 5049 of 2021
(Arising out of SLP (C) No. 12948 of 2015)
With
Civil Appeal No. 5050 of 2021
Arising out of SLP (C) No. 12191 of 2021
(Diary No. 28571 of 2018)
With
Contempt Petition (C) No. 380 of 2021
In
Special Leave Petition (C) No. 14314 of 2014
With
Contempt Petition (C) No. 381 of 2021
In
Special Leave Petition (C) No. 14314 of 2014
With
Contempt Petition (C) No. 382 of 2021
In
Special Leave Petition (C) No. 14314 of 2014
With
Contempt Petition (C) No. 383 of 2021
In
Special Leave Petition (C) No. 14314 of 2014
And With
Contempt Petition (C) No. 384 of 2021
In
Special Leave Petition (C) No. 14314 of 2014

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

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A Factual and procedural history

A.1 The appeals

2 These appeals have arisen from a judgment of a Division Bench of the High Court of Judicature at Allahabad dated 11 April 2014, upon a writ petition¹ instituted by the first respondent, the Residents' Welfare Association² of Emerald Court Group Housing Society³.

3 By its judgment, the High Court directed:

- (i) The demolition of Towers -16⁴ and 17⁵ by the third respondent, New Okhla Industrial Development Authority⁶, in Emerald Court situated on Plot No 4, Sector 93A, NOIDA constructed by the appellant, Supertech Limited⁷;
- (ii) The cost of demolition and removal would be borne by the appellant, failing which NOIDA shall recover it as arrears of land revenue;
- (iii) Sanction for prosecution under Section 49 of the Uttar Pradesh Urban Development Act 1973⁸, as incorporated by Section 12 of the Uttar Pradesh Industrial Area Development Act 1976⁹, shall be granted for the prosecution of the officials of the appellant and the officers of NOIDA for possible

¹ Writ Petition (Civil) No 65085 of 2012

² "RWA"

³ "Emerald Court"

⁴ "T-16"/"Ceyane"

⁵ "T-17"/"Apex"

⁶ "NOIDA"

⁷ "Supertech"

⁸ "UPUD Act 1973"

⁹ "UPIAD Act 1976"

violations of the UPIAD Act 1976 and Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act 2010¹⁰; and

(iv) Refund by the appellant of amounts invested by purchasers who had booked apartments in T-16 and T-17, with interest at fourteen per cent, compounded annually.

4 The correctness of these directions is challenged before this Court in the present appeals.

A.2 The Emerald Court project

5 On 23 November 2004, NOIDA allotted to the appellant a plot of land admeasuring 48,263 sq. mtrs., which was a part of Plot No 4 situated in Sector 93A. This plot of land was allotted for the development of a group housing society, by the name of Emerald Court.

6 The first deed of lease was executed on 16 March 2005 between the appellant and NOIDA. A possession certificate was issued on 17 March 2005.

7 On 20 June 2005, NOIDA sanctioned the building plan for the construction of Emerald Court consisting of fourteen towers, each with ground and nine floors (G+9). This sanction was granted under the New Okhla Industrial Development Area

¹⁰ “UP Apartments Act 2010”

Building Regulations and Directions 1986¹¹. The construction commenced for these fourteen towers.

A.3 First Revised Plan

8 On 21 June 2006, a supplementary lease deed was executed by NOIDA in favour of the appellant for an additional land area of 6556.51 sq. mtrs. in the same plot of land in Plot No 4. Adding to the existing holding allotted under the first lease deed, the total leased area allotted to the appellant increased to 54,819.51 sq. mtrs. The supplementary lease deed noted that:

- (i) The demised premises shall be deemed to be part of Plot No 4, Sector 93A, NOIDA as already leased to the appellant;
- (ii) All other conditions of the original lease deed and allotment shall remain unchanged and would be applicable to the newly demised premises, and bind the appellant;
- (iii) The period of lease shall commence from 16 March 2005; and
- (iv) The total area of Plot No 4, Sector 93A, NOIDA is 54,819.51 sq. mtrs.

The possession certificate in respect of the additional land was issued to the appellant on 23 June 2006.

9 On 5 December 2006, the New Okhla Industrial Development Area Building Regulations and Directions 2006¹² were notified. Under the NBR 2006, the Floor-

¹¹ "NBR 1986"

¹² "NBR 2006"

Area-Ratio¹³ was increased from 1.5 to 2 for new allottees after 2006. Regulation 33.2.3(i) provided as follows:

“33. 'Floor area ratio' Floor Area Ratio. Ground coverage and height limitations.

[...]

33.2.3 Any other utilities as decided by Chief Executive Officer depending on its requirement.

i. Distance between two adjacent building blocks shall not be less than half of the height of the tallest building.”

10 On 29 December 2006, NOIDA sanctioned the first revised plan for Emerald Court under the NBR 2006, by which two additional floors were envisaged in addition to the already sanctioned G+9 floors in the original fourteen towers, thereby bringing all of them to ground and eleven floors (G+11). Furthermore, additional buildings were also sanctioned, namely: (i) Tower-15 (comprising of ground and eleven floors (G+11)); (ii) T-16 (comprising of a cluster of wings including 1 wing of ground and eleven floors (G+11) and 3 wings of ground and four floors (G+4)); and (iii) a shopping complex (comprising of ground and first floor (G+1)). As a consequence, under the first revised plan, NOIDA permitted a total of sixteen towers (G+11) (which would each be 37 mtrs. in height) and one shopping complex (G+1). It is important to note that the appellant was able to have this additional construction due to the area that was made available to it under the supplementary lease deed, and further, when the appellant had allotted flats to the purchasers, only a small

¹³ “FAR”

building on the additional leased area was sanctioned. Pertinently, it is also necessary to highlight that the first revised plan contemplated a green area in front of Tower- 1¹⁴. According to the purchasers, when the flats were sold, the brochure of the appellant contained information in accordance with the first revised plan dated 29 December 2006, which shows the area in front of T-1 as a green area.

11 On 10 April 2008, a completion certificate was granted in relation to the first eight towers (G+11). Thereafter, various owners of flats were granted possession by the appellant. Crucially, the completion map also indicated a green area in front of T-1, where currently T-16 and T-17 are being constructed.

A.4 Second Revised Plan

12 On 28 February 2009, a notification was issued by the State of Uttar Pradesh enhancing the FAR from 2 (as provided under the NBR 2006) to 2.75 for new allottees. Further, the notification also provided for “purchasable FAR”, according to which old allottees (such as the appellant) could purchase FAR to the maximum extent of thirty-three per cent of their base existing FAR of 1.5.

13 On 3 July 2009, NOIDA decided that the stipulation to purchase thirty-three per cent FAR of the existing base FAR for old allottees under the notification dated 28 February 2009, should be brought at par with other allottees. As a consequence, the purchasable FAR for old allottees would be enhanced to 2.75. However, the notification by the State of Uttar Pradesh in this regard was still awaited. The

¹⁴ “T-1”/ “Aster 2”

appellant states that, in any case, based on the decision of NOIDA, it planned the construction of T-16 and T-17 in a way that catered to the additional FAR which may be available for purchase at a later date.

14 On 19 November 2009, relying on the notification dated 28 February 2009, the appellant purchased thirty-three per cent of its existing base 1.5 FAR at the cost of Rs eight crores, increasing its available FAR to 1.995.

15 However, it appears from the record that the appellant had already started construction of the disputed towers – Apex and Ceyane – prior to the grant of this sanction by NOIDA. On 16 July 2009, the appellant informed the flat owners that:

“1. That we have bought two separate plots measuring approximately 48000 square meter and 6500 square meter and got them registered separately in March 2005 & May 2006 respectively.

2. That the new towers which are being constructed will have altogether separate entry, exit, swimming pool, club & basic infrastructure. We will also construct boundary wall separating two structure i.e. existing 15 towers & Apex Ceyane.”

16 The above communication of the appellant indicates that:

- (i) The construction of T-16 and T-17 had already commenced on 16 July 2009;
- (ii) According to the appellant, these new towers would have separate entry-exit, amenities and infrastructure; and
- (iii) The new towers would be separated from the existing fifteen towers by the construction of a boundary wall.

The appellant represented to the flat-owners that a revised building plan for replacing the existing T-16 (G+11) and the shopping complex (G+1) was sanctioned, with twin towers T-16 and T-17, each of G+24 floors and a height of 73 mtrs., replacing them.

17 On 11 September 2009, the Chief Fire Officer of Gautam Budh Nagar¹⁵, the fourth respondent, issued a report to the In-charge (Building Cell) NOIDA, Sector 6 for the grant of the provisional Non-Objection Certificate¹⁶ for T-16 and T-17. The provisional Fire NOC was made subject to compliance with the requirements of the National Building Code, 2005¹⁷.

18 On 16 September 2009, a completion certification was granted in relation to another six towers (G+11). The completion map accompanying this certificate again showed the green area in front of T-1, where presently T-16 and T-17 are being constructed.

19 On 26 November 2009, NOIDA sanctioned the second revised plan for Emerald Court under the NBR 2006. In this plan, the earlier T-16 (G+11) was replaced with a T-16 consisting of ground and twenty-four floors (G+24). Similarly, the shopping complex (G+1) was replaced with T-17 consisting of ground and twenty-four floors (G+24). T-16 and T-17 would each be of a height of 73 mtrs. According to the plan, T-17 was to be at a distance of 9 mtrs. from T-1, and there

¹⁵ "CFO"

¹⁶ "NOC"

¹⁷ "NBC 2005"

was a provision for their connection through a space-frame at the upper level. This plan was sanctioned by NOIDA on the basis of the appellant having purchased thirty-three per cent of the purchasable FAR (27,135.657 sq. mtrs.), in addition to the permissible 1.5 FAR (82,229.265 sq. mtrs.), totalling to 1.995 FAR (1,09,364.922 sq. mtrs.). The second revised plan expressly provided for the following, among other conditions:

“2. Due to this sanction of the building plan, the right and ownership of any government authority like (municipality, NOIDA) any other person will not get affected.

[...]

8. A set of sanctioned building plan shall be kept at the construction site so that it can be checked at the site at any time and the construction work shall be done as per the sanctioned building plans specifications as per the rules of Noida Building Rules. The allottee shall start the construction work of the ground floor only after getting the inspection of the basement done upon completion of the work of basement from building section department, Noida. Otherwise sanctioned map deemed to be cancelled.”

(emphasis supplied)

A.5 Third Revised Plan

20 On 20 February 2010, a notification was issued by the State of Uttar Pradesh enabling old allottees to purchase FAR of up to 2.75 and, as a consequence, the limit of a maximum purchasable FAR of thirty-three per cent of the existing base FAR was removed. The notification contemplated that “the purchasable FAR shall be

allowed up to the maximum limit of applicable FAR". The notification also amended the NBR 2006, which expressly provided that:

"Purchasable FAR is an enabling provision. It shall not be allowed to any allottee as a matter of right."

21 On 19 March 2010, the UP Apartments Act 2010 came into force. Section 4(4) and Section 5 of this Act provide for the consent of the owners of flats before any change in the sanctioned plans is effected and also envisage that the percentage of undivided common interest of the owners of the flats cannot be changed without their consent.

22 On 30 November 2010, the New Okhla Industrial Development Area Building Regulations 2010¹⁸ came into force. Regulation 24.2.1.(6) contains the following stipulations:

"(6). Distance between two adjacent building blocks

Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs, depending on the height of blocks. For building height up to 18 mtrs., the spacing shall be increased by 1 metre for every addition of 3 mtrs. as per National Building Code 2005. If the blocks have dead-end sides facing each other, than the spacing shall be maximum 9 mtrs. instead of 16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs space between two blocks."

¹⁸ "NBR 2010"

23 On 18 August 2011, the CFO granted a temporary NOC in respect of T-16 and T-17, for a height of 121.5 mtrs. with proposed ground and thirty-eight floors (G+38). It was noted that once the buildings were constructed and proper fire safety equipment was installed, they would be inspected in order to assess whether a permanent NOC should be granted.

24 On 25 October 2011, in view of the notification dated 20 February 2010, the appellant purchased an additional FAR at a cost of Rs 15 crores, so as to enhance the available FAR from 1.995 to 2.75 (1,50,753.652 sq. mtrs.). On the same date, NOIDA issued a letter to the appellant in relation to the purchase of the FAR, imposing several requirements, including compliance with the provisions of the UP Apartments Act 2010.

25 On 2 March 2012, the third revised plan was sanctioned by NOIDA for Emerald Court. Through this sanction, the height of T-16 and T-17 was permitted to be raised from 24 floors to 40 floors (*i.e.*, G+40), resulting in the building's height being 121 mtrs. Further, T-16 and T-17 would also consist, *inter alia*, of two basements and open space for parking beneath the towers. The third revised plan also contained a requirement of compliance with the UP Apartments Act 2010, along with similar requirements which were present in the second revised plan.

A.6 Complaints against the Revised Plans

26 On 9 March 2012, the appellant addressed a communication to the first respondent intimating that the flat purchasers of T-16 and T-17, which were under

construction, would have altogether separate entry-exit, amenities and infrastructure.

27 On 29 March 2012, the office of the CFO, on the basis of a complaint by the first respondent, issued a notice to the appellant in regard to certain deficiencies and violations in complying with fire safety requirements.

28 On 24 April 2012, the CFO, on the basis of another complaint by the first respondent, addressed a communication to NOIDA in regards the violation of the minimum distance between T-1 and T-17. The letter, *inter alia*, states:

“When record was perused in respect of the above, it was found that:

[...]

2. There should be a minimum distance of half of the height of building in between two building blocks as per Clause No. 33.2.3. of Building Construction Regulations, 2006 and there should be a distance of 16 meters in between the buildings whose height is more than 50 meters as per Noida Regulations, 2010.

3. There should be a distance of 16 meter in between two buildings situated side by side as per National building Code of India – 2005.

Therefore, you are requested that in the light of above kindly inform that license was granted for construction of building after providing relaxation to the building in question in Special Category or construction is being carried out by the concerned is contrary to the standards.”

29 On 3 May 2012 and 22 May 2012, the first respondent filed an RTI application with NOIDA for obtaining the sanctioned plans in relation to Plot No 4 of Sector 93A. Though under the terms of the sanctioned plans the appellant was required to

display the sanctioned map at its site, NOIDA still wrote to the appellant to verify whether the sanctioned plans and maps could be made available to the first respondent. The appellant in response refused to grant its consent to release sanctioned plans and maps to the first respondent. Hence, NOIDA refused to provide the sanctioned plans to the first respondent.

30 On 19 June 2012, a show cause notice was issued by NOIDA to the appellant stating that: (i) the construction was not in accordance with the third revised plan since, *inter alia*, T-1 and T-16/17 were not joined by a space frame; and (ii) a copy of the plan had not been exhibited at the site office. The appellant replied to the show cause notice on 26 June 2012 stating that T-16 and T-17 were still under construction and the space frame would be built at the time of construction.

31 On 26 June 2012, NOIDA issued a completion certificate to the appellant in respect of Tower-15 (G+11).

32 On 28 June 2012, the first respondent addressed a communication to NOIDA complaining of violations and misrepresentations made to the owners by the appellant, and sought cancellation of the layout plan of the two new towers, T-16 and T-17. The first respondent followed up its earlier communication with letters dated 9 and 29 August 2012 demanding information, and intimating that the construction was being carried out by the appellant in violation of the norms.

A.7 Proceedings before the Allahabad High Court

33 On 10 December 2012, the first respondent filed a writ petition under Article 226 of the Constitution before the High Court seeking *inter alia* the following reliefs:

“i. Issue a writ, order or direction quashing the revised plan approved by respondent 2 for construction of new towers namely Tower 'APEX' and 'CEYANE' in plot no. 4, Sector 93-A, and issue further directions for demolishing of aforesaid towers, the approval and construction being in complete violation of provisions of U.P. Apartments Act of 2010.

ii. Issue a writ, order or direction directing the Respondent 2 not to sanction amendments to any further building plans in respect of the Group Housing Society being developed by respondent 5 without obtaining consent of all the residents.

iii. Issue a writ, order or direction quashing the permission granted to respondent 5 to link Tower T-1 and T 'APEX' / 'CEYANCE' through space frame.

iv. Issue a writ, order or direction directing respondents 2 and 3 to ensure that fire safety equipment and infrastructure is installed at the expenses of respondent 5 within a specified period.

v. Issue a writ, order or direction directing respondent 2 to demolish illegal construction made in the basement and setback area as per notice dated 19.06.2012 and 17.07.2012.

vi. Issue a writ or direction directing respondent no. 2 and 5 to provide car parking spaces (both aboveground and in the basement) as per the provisions of the NBC 2005 to all the legal allottees/residents of Supertech Emerald Court Complex, plot 4, Section 93-A NOIDA.”

34 The first respondent only pressed reliefs i and iii, seeking a direction to quash the revised plan which approved the construction of T-16 and T-17, and to demolish them. The first respondent also sought the quashing of the permission granted to link T-1 and T-16/T-17 through a space frame. During the pendency of the writ

proceedings, in pursuance of a specific order of the High Court, the RWA was provided with the sanctioned maps together with related information and documents in respect of the construction at the site. Pleadings were subsequently exchanged between the parties.

35 The appellant filed a counter affidavit on 27 January 2013 submitting that:

- (i) The first respondent is not recognised by the appellant under the UP Apartments Act 2010;
- (ii) The first respondent should have first approached the Chief Executive Officer of NOIDA, who is the competent authority under the UP Apartments Act 2010, and then the State Government, before approaching the High Court under the writ jurisdiction;
- (iii) Construction of T-16 and T-17 was approved on 26 November 2009, but the writ petition had been filed after three years in December 2012, when the building is in an advanced stage of construction. Hence, the writ petition is barred by delay and laches; and
- (iv) T-16 and T-17 were sanctioned in 2009 under the NBR 2006. The final sanction given on 2 March 2012 only increased the height of the towers from twenty-four floors to forty floors, after the appellant purchased the additional FAR. Under the NBR 2006, there is no provision with regard to the minimum distance between two “building blocks”. Since the NBR 2006 did not incorporate the NBC 2005, the mandatory requirement of 16 mtrs. between two building blocks for buildings higher than 55 mtrs. need not be followed.

The distance requirement between two building blocks was only mandated by NBR 2010, which is not applicable since the initial sanction for T-16 and T-17 was given under NBR 2006.

36 NOIDA in its counter affidavit dated 7 February 2013 stated that:

- (i) It allotted the plot to the appellant by complying with the NBR 2010. The sanction was also given with the specific condition that the UP Apartments Act 2010 must be complied with;
- (ii) Plot No 4 is not divided into two projects. It is unified and belongs to a single project; and
- (iii) The permission for the construction of a space frame connecting T-1 with T-16/T-17 was granted only after the design was approved by IIT Roorkee.

37 The High Court allowed the writ petition on 11 April 2014 and directed the demolition of T-16 and T-17, with the expenses of the demolition being borne by the appellant. It further directed the Competent Authority to grant sanction for the prosecution of NOIDA's officials as required under the UPUD Act 1973, within a period of three months. The High Court also directed the appellant to refund the consideration received from flat purchasers who had booked apartments in T-16 and T-17, with fourteen per cent interest compounded annually. While allowing the writ petition, the High Court made the following observations:

- (i) The first respondent had the *locus* to institute proceedings under Article 226 of the Constitution. The flats were handed over to the purchasers by

September 2009. The RWA was formed and registered with the Registrar of Societies in the same year. The Model Bye-Laws under the UP Apartments Act 2010 were notified by the Government on 16 November 2011. However, the Deputy Registrar Firms, Societies and Chits, Meerut, Uttar Pradesh issued a letter on 14 December 2012 stating that pending instructions from the Registrar, no decision could be taken in respect of the Model Bye-Laws and registration. The Registrar by a circular dated 5 December 2013 issued instructions for registration of the first respondent under the UP Apartments Act 2010. On 20 October 2013, the first respondent by its resolution adopted the Model Bye-Laws and conducted its elections. Further, in any case, the appellant had recognized the first respondent since its inception and had corresponded with it continuously. The appellant had never raised objections on its competence to represent the flat purchasers. The grant of sanction by NOIDA in violation of the relevant building regulations affects the rights of every apartment owner, who is represented through the first respondent. Hence, the first respondent is a 'person aggrieved' and was entitled to initiate the writ proceedings;

- (ii) The first respondent under Article 226 was not barred by the available remedy of approaching either the CFO, NOIDA under the UP Apartments Act 2010 or the State under Section 27 of the UPIAD Act 1976. Though the first respondent raised its grievance before NOIDA, no notices were issued and there was no follow up. Only if NOIDA had issued an order, could the first respondent have approached the State Government under Section 27 of the

UPIAD Act 1976. Thus, there was no other alternative remedy that was available to first respondent but to initiate writ proceedings;

- (iii) The appellant must have submitted a declaration in the office of the competent authority with regard to the construction of the building under the UP Apartments Act 2010. Rule 4 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules 2011 states that when the competent authority receives an application for amendment of the declaration, it shall issue a written notice to the association of the building owners and an order shall be passed by the competent authority only after the association is given the opportunity of being heard. Since no such notice was given to the association, it is an 'aggrieved person' and thus has the locus to initiate writ proceedings;
- (iv) The original building plan was sanctioned when NBR 2006 was in force. However, the approval for purchase of additional FAR was made in 2011. It is a settled principle of law that the rules and regulations applicable on the date of the sanction would determine the rights of the parties. The sanction given on 2 March 2012 further imposed a condition of applicability of the UP Apartments Act 2010. Therefore, both the NBR 2010 (and NBC 2005, since NBR 2010 makes it applicable) and the UP Apartments Act 2010 shall be applicable;
- (v) The contention of appellant that the project was in two phases is not borne out from the record since NOIDA has permitted the purchase of additional FAR and granted the subsequent sanction treating the project as a single

project. The plans submitted and sanctioned were for a single project, and an attempt has been made by the appellant to mislead the court;

- (vi) Regulation 24.2.1(6) of the NBR 2010 states that for buildings up to the height of 18 mtrs., the spacing between two adjacent building blocks shall be 6 mtrs. and the spacing shall be increased by 1 mtr. for every 3 mtrs. above 18 mtrs., but subject to a maximum distance of 16 mtrs. Para 8.2.3.1 of the NBC 2005 states that for buildings higher than 55 mtrs., 16 mtrs. open space must be left in the sides and rear.. Since the height of T-17 is 121 mtrs., the distance between the building blocks must at least be 16 mtrs. However, the distance is only 9 mtrs. and is deficient by 7 mtrs.;
- (vii) The appellant, in collusion with NOIDA, obtained sanctions for the layout map in violation of the mandatory requirement for space to be maintained between building blocks and clear space;
- (viii) The provisions of the UP Fire Prevention and Fire Safety Act 2005¹⁹ were required to be complied with, according to which the minimum distance of 7.5 mtrs. between building blocks and a clear space must be provided, which has been violated in the third revised plan of 2012;
- (ix) The submission of the appellant that the expression 'building blocks' having not been defined in the NBR 2010, would mean the entire set of buildings on Plot No 4 is contrary to the NBR 2006 and NBR 2010. The sanctioned plans show that the appellant got the layout approved, consisting of separate

¹⁹ "Fire Safety Act"

blocks. The nomenclature of the blocks was subsequently changed in each successive plan, and finally the buildings were numbered as T-1 to T-17. The sanctioned plans clearly show that T-1 and T-16/17 are separate building blocks; and

- (x) The plan sanctioned by NOIDA was contrary to: (a) the building regulations; (b) the mandatory distance between building blocks; and (c) the movement space required, as a result of which the rights of the apartment owners and the safety of their apartment blocks have been seriously affected.

A.8 Proceedings before this Court

38 The appellant filed a Special Leave Petition under Article 136 of the Constitution on 28 April 2014 assailing the judgment of the High Court. On 5 May 2014, this Court directed the maintenance of *status quo* in respect of T-16 and T-17, directing that neither the builder nor the purchaser shall alienate the property or create third party rights. During the course of the hearings on 19 July 2016 and 27 July 2016, the appellant and NOIDA submitted that the Court may have the view of an expert agency on the issue and engage an expert for this purpose. On the submission of the Additional Solicitor General, the National Buildings Construction Corporation Limited²⁰, a government owned enterprise, was appointed to examine various facts in relation to the dispute, particularly those having a bearing on whether the two towers (T-1 and T-17) have dead-end sides facing each other. By its report dated 13 October 2016, the NBCC concluded that the two towers are not

²⁰ “NBCC”

compliant with Regulation 24.2.1.6 of the NBR 2010. Apart from the report which has been submitted by the NBCC, the first respondent had commissioned IIT Delhi and IIT Roorkee to report on the disputed issue of 'dead ends'. Reports by them have been placed on the record.

39 By its interim orders dated 6 September 2016 and 11 January 2017, this Court directed that a group of applicants be given ten per cent per month towards return of investment²¹. On 22 September 2017, this Court directed Mr Gaurav Agarwal, *Amicus Curiae*, to create a portal link to coordinate with the appellant and the flat purchasers on issues relating to refund. Further, this Court directed that the principal amount along with interest of fourteen per cent shall be provided to the flat purchasers who have opted not to wait for the decision of this Court in the present Special Leave Petition.

40 By an order dated 30 July 2018, this Court with the assistance of the *Amicus Curiae* classified the home buyers into the following groups, based on the refund option chosen by them:

- (i) Refund of principal amount along with twelve per cent simple interest per annum (one hundred and one home buyers);
- (ii) Home buyers who still insist on getting interest at the rate of fourteen per cent (twenty-four home buyers) - since a substantial number of home purchasers

²¹ "ROI"

have agreed to twelve per cent interest, these twenty-four purchasers were also directed to accept the twelve per cent interest rate;

- (iii) Home buyers through the Subvention Scheme – in such cases, the EMIs shall be paid by the appellant until the possession is handed over; and
- (iv) Disputed cases - Mr Sanjeev Agrawal and Ms Rashmi Arora have paid Rs 38,51,009 and Rs 17,43,162 respectively by cheque. The said amount shall be refunded with a simple interest at twelve per cent per annum.

B Submissions by Counsel

41 Mr Vikas Singh, learned Senior Counsel appearing on behalf of the appellant urged the following submissions:

- (i) The sanction and construction of T-16 and T-17 is not violative of the distance rule under NBR 2010:
 - a. NBR 2010 does not apply to T-16 and T-17, since they were first sanctioned in the second revised plan issued under the NBR 2006. Under the NBR 2006, the distance provision in Regulation 33.2.3(i) was not mandatory and it was open to the CEO to stipulate the distance requirement depending upon the exigencies of a lay out plan. In any case, the Regulation applies to the distance between two building blocks and does not govern the distance between the T-1 and T-17, which form a part of the same block. Further, if this provision was mandatorily applied, then it would also affect the first revised plan, in which the heights of the fifteen

other towers is 37.5 mtrs. while the distance with the adjacent blocks was less than half the height, *i.e.*, less than 18.75 mtrs.;

- b. Even if NBR 2010 was to apply, T-16 and T-17 are part of the same building block consisting of T-1, Tower-2, Tower-3 and T-17, which is connected by a space frame to T-1. Hence, Regulation 24.1.2(6) of the NBR 2010, which provides for a distance to be maintained between “adjacent building blocks” (“Bhawan Samuh”/cluster of buildings), is not applicable in respect of the distance between T-17 and T-1;
- c. The concept of a building block has been explained in a note submitted by NOIDA to the High Court. While using the FAR, the only requirement is to maintain a certain percentage as an open/green area. Instead of scattering the buildings over the total project area, group housing projects can envisage adjacent towers or even a block of towers so as to ensure a large open green space rather than scattered small spaces all over the project;
- d. In the alternative, even if they are not part of the same building block, T-17 being a “tower like structure”, para 8.2.3.2 of the NBC 2005 is attracted in terms of Regulation 24.2.1(6). In accordance with para 8.2.3.2, the minimum distance for buildings of a height of less than 37.5 mtrs. is 9 mtrs., while for buildings of a greater height, it is 12 mtrs. Further, in accordance with para 8.2.3.2(d), the deficiency of this distance at the ground level can be made good at the upper levels. Hence, maintaining a

minimum distance of 16 mtrs. between “tower like structures” is not an inviolable requirement;

- e. In the present case, the minimum distance between T-1 and T-17 varies from 9.88 mtrs (at the ground level) to 25.75 mtrs (at the upper level), since the total height of T-1 is 27.61 mtrs. while that of T-17 is 84.5 mtrs. As such, it is in compliance with NBC 2005; and
 - f. The Model Bye-Laws 2016 issued by the Ministry of Urban Development, Government of India prescribe a 9 mtrs. space around any building irrespective of the height beyond 40 mtrs.;
- (ii) The sanction to construct T-16 and T-17 is not violative of the UP Apartments Act 2010:
- a. T-16 and T-17 were sanctioned on 26 November 2009, and hence the requirement of prior consent did not arise, since the Act was not in force then;
 - b. The flat owners of T-1 to T-15 who already had possession of their flats would not be “intended purchasers” under the proviso to Section 4(4) of UP Apartments Act 2010, and their consent was not required for the construction of additional floors in T-16 and T-17;
 - c. The consent of all flat owners would be impractical, and at best the consent of the RWA would suffice. On 2 March 2012, when the third revised plan was sanctioned, the RWA was not functional and it was only

on 20 October 2013 that the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010;

- d. There has been no violation of the common area facilities of the flat owners of T-1 to T-15 by the creation of T-16 and T-17, since they have been planned with separate entries and exit facilities together with infrastructure; and
 - e. A majority of the flat owners of T-1 to T-15 was fully aware of the sanction to construct T-16 and T-17 since: (i) 245 flats were booked till the first revised plan in 2006; (ii) between 2006 and until the second revised plan in 2009, 141 flats were booked; (iii) after the second revised plan and until the third revised plan in 2012, 114 flats were booked; and (iv) after the third revised plan in 2012 till 2 August 2021, 159 flats have been purchased;
- (iii) There has been no violation of fire safety norms:
- a. A provisional Fire NOC was received on 11 September 2009, prior to the sanction on 26 November 2009. The fire department thereafter granted another temporary NOC for T-16 and T-17 on 18 August 2012, prior to the sanction dated 2 March 2012; and
 - b. Under NBR 1986 and NBR 2006, buildings were required to be compliant with fire safety norms prescribed in Part-IV of the NBC 2005. Para 4.6(b) of the NBC 2005 provides that for high rise buildings, open spaces on all sides up to a width of 6 mtrs. shall be available for free movement of fire

tenders. In the present case, there is a clear space of 9 mtrs. between T-1 and T-17, which allows a free movement of fire tenders;

- (iv) The Uttar Pradesh Ownership of Flats Act 1975²² is not applicable:
- a. Under Section 2, the Act applies only to properties, the owners of which submit to the provisions of the Act by executing a declaration. As such, the Act does not automatically apply to all properties and none of the flat owners have made executed any such declaration presently;
 - b. Clause II(h) of the lease deed dated 26 March 2005 deals with maintenance, and cannot be construed to incorporate the application of the UP 1975 Act; and
 - c. If the contention of the first respondent is accepted, the changes made by the first revised plan in T-1 to T-15, involving an increase in the height of all towers from nine to eleven floors, would also to be illegal;
- (v) There is no green area violation in the sanctioning of T-16 and T-17:
- a. A triangular green space in the first revised plan was planned for the newly proposed T-16 (G+11) and shopping complex (G+1). This area was over and above the mandatory green area (soft landscape) required to be maintained on the plots under the NBR 2006;
 - b. The central green area was sanctioned in the original plan of 2005. The required green area under Regulation 38 of the NBR 2006 was twenty-five per cent of the open area, which would be 11,538,02 sq. mtrs. whereas

²² “UP 1975 Act”

the appellant had provided a green area of 12,064.91 sq. mtrs. in the form of a central park;

- c. T-1 was not sold on the promise of a green space area in front of it and none of the buyers were charged preferential location charges; and
 - d. Only eleven flats in T-1, out of a total of 44, were booked after the sanctioning of first revised plan and before the second revised plan. Out of these eleven, only seven flats were facing towards T-17. Even in these seven, there were no windows/balconies facing T-17, but only small bathroom windows;
- (vi) The sanction of T-16 and T-17 is based on a valid certificate as regards the structural design of the towers;
- (vii) The appellant has not collected the entire lease rent payable to NOIDA only from the flat owners of T-1 to T-15. It has only collected around Rs 7.5 crores, while it itself has paid around Rs 14 crores; and
- (viii) The order for demolition of T-16 and T-17 is liable to be set aside on ground of equity:
- a. The construction was carried out with the sanction of the authorities;
 - b. 600 persons had purchased flats in these towers;
 - c. Construction began in December of 2009, and third-party rights in favour of the purchasers have been crystalized;
 - d. The petition was filed before the High Court in December 2012; and

- e. 28 floors in T-17 and 26 floors in T-16 were constructed as on 20 December 2013 when arguments were concluded before the High Court, and by the time that the judgment was delivered, 32 floors had been constructed.

Hence, the order of demolition would be harsh and inequitable.

42 Supplementing the submissions of Mr Vikas Singh, Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, made the following submissions:

- (i) Para 8.2.3.2 of NBC 2005 provides that for buildings of heights between 24 mtrs. to 37.5 mtrs. with one setback, the open space at the ground level shall not be less than 9 mtrs. Since the height of the existing tower Aster-2 (T-1) is less than 37.5 mtrs., the minimum space required between this tower and T-17 is only 9 mtrs. Further, the deficiency of open space can be made good through set-backs at the upper level. However, since the height of T-1 is not proposed to be increased and the tower is open from all three sides, this requirement need not be fulfilled;
- (ii) The various NOIDA Building Regulations have not been violated as they do not prescribe the minimum distance between two towers. It only refers to the distance between 'building blocks', with reference to the NBC 2005;
- (iii) If building blocks have dead end sides facing each other, then the space between two building blocks shall be a maximum of 9 mtrs. as per the NBR 2010. Similar provisions are found in other building bye-laws such as Delhi

- Building Bye Laws, Bhubaneswar Development Authority Building Byelaws, and Model Building Byelaws prepared by the Ministry of Urban Development;
- (iv) The Fire Safety Act has also been adhered to, as it requires a minimum distance of 6 mtrs. between two towers to provide space for movement of fire tenders;
 - (v) The construction of the buildings was not stayed by the High Court, which has now jeopardized the rights of third-parties, who will now be aggrieved by the order of demolition;
 - (vi) At the time of sanction of the second revised plan dated 26 November 2009, the UP Apartments Act 2010 had not been enacted. With respect to grant of sanction to the third revised plan, the power to sanction the plans or revisions vests with NOIDA and is not curtailed by the UP Apartments Act 2010;
 - (vii) UP Apartments Act 2010 does not mandate the taking of any consent or NOC from the RWA prior to sanction of plans. In spite of this, an obligation was placed on the appellant to abide by the provisions of UP Apartments Act 2010, while sanctioning the third revised plan dated 2 March 2012;
 - (viii) While sanctioning the third revised plan, there was no change in the ground coverage area of T-16 and T-17 and only their proposed heights were increased; and
 - (ix) There is no factual foundation to conclude that there had been any collusion between the appellant and NOIDA.

43 Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of RWA urged that the members of the RWA purchased their flats after being shown a layout which included a limited number of flats and gardens, including a garden in front of T-1. Many of the allottees are retired persons who have suffered as a result of the unilateral changes made by the appellant, which resulted in an increase in the number of flats from 689 to 1573. The garden area in front of T-1 has been completely removed and instead of a complex of 11 storeyed buildings, two long and tall structures have been sanctioned without the consent of the existing allottees obliterating their right to light, air, view and garden area, thereby endangering their safety. Mr Bhushan submitted that:

- (i) The sanctions of 2009 and 2012 are in violation of the minimum distance criteria required to be maintained between two buildings. Under Regulation 32.3.1(i) of the NBR 2006, the distance required is half the height of the tallest building. The tallest building, T-17, under the second revised plan of 2009 is 73 mtrs. and hence, the minimum distance of 36.5 mtrs. was required between T-1 and T-17. Even the existing T-1 is of 37 mtrs. height and therefore, even a building smaller than T-1 could come up only at a distance of at least 18.5 mtrs from T-1;
- (ii) Regulation 24.2.1(6) of the NBR 2010 requires a minimum distance of 16 mtrs. between T-1 and T-17, as opposed to 9 mtrs. at the side;
- (iii) Under para 8.2.3.1 of NBC 2005, the distance required between buildings would be 16 mtrs. plus ten per cent of the building length minus 4 mtrs. The

length of the proposed tower is 84.5 mtrs., and hence the distance required would be $(16 + (10 \text{ per cent of } 84.5) - 4)$, which is equal to 20.45 mtrs.;

- (iv) The requirement of complying with NBC 2005 is prescribed by NBR 2010 and the NOC issued by the CFO in 2009. In this regard, on 24 April 2012, the CFO inquired from NOIDA how the new buildings were sanctioned in violation of the distance criteria prescribed in NBR 2006 and 2010, and NBC 2005, which was not responded to by NOIDA;
- (v) NBCC, which was appointed by this Court at the request of the appellant, has stated in its report that the distance requirement has been violated;
- (vi) In response to the argument of the appellant that T-1, T-16 and T-17 form part of one building block, obviating the requirement of minimum distance, it was submitted that:
 - a. NBC 2005 refers to the distance between buildings and not building blocks;
 - b. The expression “building block” though used in NBR 2006 and 2010, has not been defined in either of the regulations. The rationale for the distance between building blocks is to ensure fire safety evacuation, light and ventilation. It cannot be left to the builder to designate groups of buildings as one building block since the purpose of maintaining the minimum distance would be seriously compromised. The expression must take its colour from NBC 2005 and every building must be a building block; and
 - c. The reports submitted by the IITs of Delhi and Roorkee specify functional requirements of distance between buildings including:

- i. fire separation to avoid transmission between buildings;
- ii. safe escape and rescue during fire;
- iii. ventilation; and
- iv. daylight access.

These requirements have been severely compromised due to the lack of the minimum distance between T-1 and T-17;

- d. Regulation 24.2.1(6) of NBR 2010 refers to NBC 2005 as the source of the distance requirement. The interpretation of the phrase 'building block' in NBR 2010 and 2006 must be consistent with NBC 2005;
- e. The first revised plan of 2006 shows that each building was intended to be a separate block;
- f. The initial argument of the appellant was that T-1 and T-17 are on separate plots and were never intended as the same block. Subsequently, the appellant claimed that they were constructed in separate phases and were to have separate facilities. Later, it introduced a false and unapproved map showing T-1, T-2, T-3, T-16 and T-17 as one block;
- g. The affidavit of the appellant dated 4 August 2021 before this Court states that T-16 and T-17 will have separate facilities including entry and exit;
- h. T-1, T-16 and the shopping complex as sanctioned in the first revised plan of 2006 were distanced and were different blocks altogether;

- i. The construction of T-1 was completed in April 2008 and possession was granted to allottees. It was not legally possible to construct T-17 in 2008 since it was first sanctioned only in November 2009;
 - j. The road between T-1 and T-17 is the main road for the society and leads into the basement and parking;
 - k. The basement of T-1 has one level while T-17 has two levels;
 - l. The foundation of T-1 is made to bear a load of only eleven floors. The appellant has claimed that though the foundation of T-17 was laid in 2009, when only twenty-four floors were sanctioned, it was meant to bear a load of forty floors, which were sanctioned only in 2012;
 - m. The connection of two building blocks with the space frame would not make it one building block; and
 - n. The appellant itself was unconvinced by the building block argument and raised the 'dead end' side issue, which led to the appointment of NBCC by this Court to verify the facts. After a negative report from NBCC, the appellant has once again fallen back on the building block argument to assert that blocks can be defined at the discretion of the developer;
- (vii) In response to the submission of the appellant that the buildings are "tower like structures" under the NBC 2005 and thus, meet the minimum distance mandated, it was submitted that:

- a. Requirements of NBR 2006 and 2010 and NBC 2005 are independent and hence, the defence of a tower like structure under the NBC 2005 cannot cure violations of the NBRs;
 - b. T-17 does not have any set-backs and has the same width throughout;
 - c. At least 12 mtrs. distance is required at the ground level even for tower like structures; and
 - d. The deficiency of the mandated open space of 16 mtrs. under the NBC 2005 in tower-like structures can be cured by set-backs on upper levels. However, the distance of 12 mtrs. at the ground level is still mandatory;
- (viii) Possession of flats in T-1 was given to purchasers in 2008. The second and third revised plans of 2009 and 2012 respectively proposed a space frame connecting T-1 and T-17 when the residents had already started living in T-1. This is illegal and a safety hazard;
- (ix) Under the lease, the undivided interest in common areas stood transferred to the respective allottees. The owners of the existing flats had paid the entire lease amount and more. While the appellant paid Rs 13 crores as onetime lease rent, the buyers of existing flats (other than those in T-16 and T-17) were charged over Rs 16 crores;
- (x) Consent of flat owners was required under UP Apartments Act 2010 before an alteration in the sanctioned plan:
- a. Sections 4(4) and Section 5(3) of the UP Apartments Act 2010 requires the consent of all allottees before a change in the sanctioned

- plan/undivided interest in the common area is made. The removal of the green area reduced the common areas and, with an increase in the flats from 689 to 1573, the proportionate undivided interest in the common areas has been reduced substantially;
- b. The UP Apartments Act 2010 is applicable irrespective of whether or not a society is formed. The rights are vested with the apartment owners and not the association; and
 - c. Gardens as well as land are included in the definition of common areas over which all residents have rights;
- (xi) Consent of flat owners ought to have been obtained before obtaining an alteration of the sanctioned plan, under UP 1975 Act:
- a. Under Sections 5(2) and 5(3), undivided interest cannot be altered without the consent of all owners of flats;
 - b. Clause II(h) of the lease deed stipulates the applicability of the UP 1975 Act. This is not confined only to maintenance. The tripartite sub-lease between NOIDA, the appellant and the allottees also mandates the applicability of the UP 1975 Act; and
 - c. The appellant was responsible to ensure that the declaration under the UP 1975 Act was made. It cannot take advantage of its own wrong in failing to submit a declaration;
- (xii) The appellant and NOIDA have colluded to by-pass the Building Regulations:

- a. Despite the revised plans violating the distance criteria, NOIDA granted sanction to the said revisions. The plans were not cancelled despite repeated reminders from the RWA;
 - b. Despite the letter of the CFO dated 24 April 2012 highlighting the violation of the distance criteria, NOIDA did not take any action;
 - c. The appellant was aware in advance that its plan would be sanctioned in the future, and hence built a stronger foundation in 2009 to support forty storey buildings for T-16 and T-17, which received sanction only in 2012;
 - d. Under the terms of approval, the sanctioned plan had to be kept at the site for display. In spite of this, there was a failure of the appellant to display the plans. When a request was made by the RWA to NOIDA to provide a copy of the plans, NOIDA asked the appellant whether it could supply the plans. Upon the refusal by the appellant, NOIDA declined to provide the plans; and
 - e. No action was taken by NOIDA after issuing a show cause notice for violation of the minimum distance requirement to the appellant based on a complaint by the flat owners;
- (xiii) No part of the second revised plan of 2009 can be saved as it is in violation of the distance criteria contained in the NBR 2006, and is also contrary to the UP 1975 Act;
- (xiv) The appellant cannot make any further constructions without the consent of the existing flat owners under the UP Apartments Act 2010 and the Real Estate Regulation and Development Act 2016;

- (xv) There is no equity in favour of the flat buyers in the new buildings (T-16 and T-17) who have decided to retain their flats, particularly when this Court had through several orders granted an opportunity to the purchasers to seek refund;
- (xvi) T-16 and T-17 can safely be demolished; and
- (xvii) False and misleading statements have been made by the appellant in the course of its pleadings before the High Court and this Court.

C Prefatory observations

44 At the outset, it must be noted that:

- (i) The area which was originally leased to the appellant admeasured 48,263 sq. mtrs.; and
- (ii) As a result of the supplementary lease, the area stood increased to 54,816 sq. mtrs.

In order to bring clarity to the issues raised, the dates of sanction and details of the construction are tabulated below:

Title	Date of Sanction	Buildings	Details
Original Plan	20 June 2005	Towers 1-14	G+9 floors
First Revised Plan	29 December 2006	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Tower 16	T-16 was to comprise of a cluster of wings comprising

			of 1 (G+11 floors) and 3 (G+4 floors) with a height of 37 mtrs.
		Shopping Complex	G+1 floor
Second Revised Plan	26 November 2009	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Towers 16-17*	G+24 floors, height of each tower increased to 73 mtrs.
Third Revised Plan	2 March 2012	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Towers 16-17 ^φ	G+40 floors, height of each tower is increased to 121 mtrs.

The plan for the construction was originally sanctioned on 20 June 2005. Thereafter, three revisions were sanctioned on 29 December 2006, 26 November 2009 and 2 March 2012.

45 The sanctioning of the revised plans and the construction of T- 16 and T- 17 have been challenged on the ground of a violation of:

(i) NBR 2006;

* The earlier G+1 shopping complex is numbered as T-16, while the original T-16 is numbered as T-17. Further, T-1 and T-17 were to be connected by a space frame at the upper level.

^φ As per the third revised plan dated 2 March 2012, the proposed floors for T-16 and T-17 were G+40. We note however, that in the details of sanctioned plans submitted by Mr Vikas Singh, learned Senior Counsel, the number of floors envisaged for T-17 were G+39 and T-16 were G+40. Further, as per the provisional Fire NOC dated 18 August 2011, the proposed construction for T-16 and T-17 was for G+38 floors.

- (ii) NBR 2010;
- (iii) NBC 2005;
- (iv) UP 1975 Act;
- (v) UP Apartments Act 2010; and
- (vi) Fire safety norms.

The appellant disputes the applicability of the UP 1975 Act. This will be considered in the course of the judgment.

46 It becomes necessary to clear the ground in regard to the reliefs which were sought before the High Court. The reliefs sought before the High Court in the petition were for:

- (i) Quashing the revised plan for the construction of T-16 (Ceyane) and T-17 (Apex) and the demolition of the structures constructed pursuant to the plan;
- (ii) Directing NOIDA to not sanction any further building plans in respect of Emerald Court without obtaining the consent of all residents;
- (iii) Quashing the permission granted to link T-1 with T-16/ T-17;
- (iv) Directing the installation of fire safety equipment and infrastructure;
- (v) Directing the demolition of the illegal construction in the basement and the setback area; and
- (vi) Directing NOIDA and the appellant to provide car parking spaces in accordance with NBC 2005.

Of the above reliefs, the High Court recorded that only prayers (i) and (iii) were pressed.

47 The above narration establishes that there was a challenge to the revised plans by which the construction and increase in the height of T-17 (Apex) and T-16 (Ceyane) were envisaged. As the tabulation set out above indicates, in the first revised plan of 29 December 2006, T-16 was to partially comprise of G+11, the rest being G+4. A shopping complex was envisaged comprising of G+1 floors. A triangular green area is indicated in the first revised plan of 29 December 2006 in front of T-1. In the second revised plan of 26 November 2009, T-17 (Apex) and T-16 (Ceyane) came to be envisaged with twenty-four floors and of a height of 73 mtrs. each. In the third revised plan of 2 March 2012, the number of floors of T-16 and T-17 was increased further from twenty-four to forty floors (for T-16) and thirty-nine floors (for T-17), and the height of each of the towers was increased from 73 mtrs. to 121 mtrs. In this backdrop, the relief which was sought in prayer (i) was for quashing the revised plan for the construction of the two new towers – T-17 (Apex) and T-16 (Ceyane). This clearly implicates a challenge both to the second revised plan of 26 November 2009 as well as the third revised plan of 2 March 2012.

48 A brazen attempt at stonewalling the first respondent was made by the appellant and NOIDA before the High Court. The sanctioned plans incorporate the condition that a copy of each plan would be made available at the site. Despite this, when the first respondent sought copies of the sanctioned plans and other information, NOIDA wrote to the appellant asking for their consent to provide the

plans to the first respondent. When the appellant refused, NOIDA's refusal to the RWA followed suit. It was only pursuant to the interim directions of the High Court that the sanctioned plans and documents were provided to the first respondent. The reliefs which have been sought encompass a challenge to the validity of the second and third revised plans, under which the two towers, T- 17 (Apex) and T-16 (Ceyane), were being constructed.

D Violation of distance requirement under Building Regulations

49 The first issue we shall address is whether the sanction for the construction of T-16 and T-17 by NOIDA is in violation of the distance requirement under applicable building regulations.

Original sanction dated 20 June 2005

50 When the plan was originally sanctioned on 20 June 2005, the NBR 2006 was yet to come into force. The sanction of 20 June 2005 was under the regime of the NBR 1986. NBR 1986 envisaged a 15 mtrs. set back from the front and 9 mtrs. on all sides. Since the original plan did not envisage construction of T-16 and T-17, the said plan is not under challenge for violation of the relevant building regulations.

First revised sanction dated 29 December 2006

51 NBR 2006 came into force on 16 December 2006. The sanctioned plan for the project was first revised on 29 December 2006, and it covered a total area of 54,819 sq. mtrs., leased to the appellant under the Lease Deed and the

Supplementary Lease Deed. The first revised plan provided for the construction of two additional towers (T-15 and T-16) and one shopping complex (G+1 floors). All 16 towers were to comprise of G+11 floors and were to be 37 mtrs. in height.

52 The first revised plan was governed by the NBR 2006. Regulation 33 provided for permissible FAR, ground coverage and height of buildings. Regulation 33.2 dealt with the group housing. The table appended to it is as follows:

“33.2 Group Housing

GROUP HOUSING				
		Max Ground Coverage	FAR	Height
1	Coverage	30	200	No limit
2	Density	As mentioned in the section layout plan or scheme		

Regulation 32 deals with set-backs, which is defined as the line parallel to the plot boundaries, beyond which nothing can be constructed towards the plot boundaries. Regulation 32.3 stipulates that where a plot size exceeds 40,000 sq. mtrs., there has to be a front setback of 25 mtrs., while setbacks on the rear and on all sides will be 9 mtrs. Regulation 33.2.3 is relevant for the dispute in the present case and it stipulates as follows, insofar as is relevant:

“i. Distance between two adjacent building blocks shall not be less than half of the height of tallest building.”

(emphasis supplied)

Second revised sanction dated 26 November 2009

53 The second revision to the original plan was sanctioned on 26 November 2009, under the NBR 2006. The second revised plan envisaged that instead of the construction of T-16 (comprising of G + 11 floors and G+4 floors), and a shopping complex (G + 1 floor), two towers, T- 16 and T-17, would be constructed, each comprising of G+24 floors and of 73 mtrs. height. According to the revision, a 9 mtrs. distance was to be maintained between T-17 and T-1 at the ground level, and T-1 and T-17 were to be connected through a space frame at the upper level. The second revised plan provided that a front set back of 15 mtrs., and a rear and side set-back of 9 mtrs. each was approved.

54 The issue is whether the second revised plan for construction of T-16 and T-17 each of a height of 73 mtrs. and at a distance of 9 mtrs. from T-1, is in compliance with the applicable regulation at the time, that is NBR 2006. We shall advert to this in the next section.

Third revised sanction dated 2 March 2012

55 The third revision to the plan was sanctioned on 2 March 2012, by which the height of T-16 and T-17 was increased from 73 mtrs. to 121 mtrs., and the number of floors in T-16 and T-17 was increased from twenty-four to forty floors.

56 At the time of the sanction of the third revised plan, the NBR 2010 had come into force. Regulations 1.6 and 1.7 of the NBR 2010 are in the following terms:

“1.6 The plot on which map has already been sanctioned and construction has already started or completed, **the allottee may be allowed to revise the same building plan or submit the new plan as per the prevailing regulations for that part of the building where construction has not started** or any new addition is required in the building.

1.7 F.A.R, Ground coverage, setbacks and density as indicated in the regulations shall not be applicable in respect of those plots which were allotted on auction or tender basis and group housing prior to the coming into operation of these regulations. **However, the calculation of FAR and Ground Coverage in the new buildings in such plots shall be done as per these regulations.** The purchasable F.A.R and Ground coverage as per applicability may be allowed.”

(emphasis supplied)

57 Under Regulation 24.2, the following stipulations have been provided for Group Housing:

(II) Maximum permissible-

(i)	Ground coverage	35 per cent to 40000 sq. mtrs and 40% above 40000 sq. mtrs
(ii)	Floor Area Ratio	2.75
(iii)	Height	No limit. For buildings above 30 metres in height, clearance from Airport Authority shall have to be taken.
(iv)	Density (Family size 4.5)	As mentioned in the sector Layout Plan or decided by the Authority for a particular scheme.

Table No 2 of the NBR 2010 prescribes the set-back requirement in relation to Regulation 24. For all plots measuring above 40,000 sq. mtrs., the set-backs in the front are 16 mtrs. and at the rear and on the sides are 12 mtrs.

58 Regulation 24.2.1(1)(vi) provides that a distance of 6 mtrs. is to be left open for fire tenders. The said regulation is extracted below:

“The following features shall be permitted after leaving minimum 6 mtrs. open corridor for fire tenders.

- (a) Meter room as per norms of Electricity Authority.
- (b) Open transformers without any permanent enclosure keeping in view the necessary safety requirements.
- (c) Other features as mentioned in Table 3.
- (d) Rockery, well and well structures, water pool, swimming pool (if uncovered), uncovered platform around tree, tank, fountain, bench, chabutra With open top and unenclosed by side walls, compound-wall, gate, slide- swing, culverts on drains.
- (e) Any other feature, primarily ornamental in nature, not enclosing or covering space of commercial use may be permitted by the Chief Executive Officer on case to case basis.
- (f) Open generator set, filtration plant, Electrical distribution equipment, feeder pillars, telephone distribution equipments may be permitted in open setback as a service utility provided after leaving clear space for fire tender.”

With respect to the distance between two adjacent building blocks, Regulation 24.2.1.6 provides:

“Distance between two adjacent building blocks

Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs. depending on the height of blocks. For building height up to 18 mtrs, the spacing shall be 6 mtrs and thereafter the spacing shall be increased by 1 metre for every addition of 3 mtrs in height of building subject to a maximum spacing of 16 mtrs as per National Building Code – 2005. If the blocks have dead-end sides facing each other, th[e]n the spacing shall be maximum 9 mtrs. instead of

16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs. space between two blocks.”

59 The above regulation indicates that:

- (i) The distance between two “adjacent building blocks” is to be a minimum of 6 mtrs. going up to 16 mtrs., depending upon the height of the blocks;
- (ii) For a building height upto 18 mtrs., the spacing would be 6 mtrs., to be increased by 1 mtr. for every addition of 3 mtrs. to the height of the building (subject to a maximum spacing of 16 mtrs. under the NBC 2005);
- (iii) If the blocks have dead-end sides facing each other, the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs.; and
- (iv) The allottee may, however, propose more than a 16 mtrs. space between two blocks.

60 Regulation 24.2.1.6 of NBR 2010 refers to the NBC 2005 for the minimum distance requirement. The NBC 2005 contains the following stipulations in para 8.2.3.1:

“8.2.3.1 For buildings of height above 10 m, the open spaces (side and rear) shall be as given in Table 2. The front open spaces for increasing heights of buildings shall be governed by 9.4.1(a).

Table 2 Side and Rear Open Spaces for Different Heights of Buildings

(Clause 8.2.3.1)

Sl No.	Height of Buildings	Side and Rear Open Spaces to be Left Around the Building

(1)	m (2)	m (3)
i)	10	3
ii)	15	5
iii)	18	6
iv)	21	7
v)	24	8
vi)	27	9
vii)	30	10
viii)	35	11
ix)	40	12
x)	45	13
xi)	50	14
xii)	55 and above	16

NOTES

1 For buildings above 24 m in height, there shall be a minimum front open space of 6 m.

2 Where rooms do not derive light and ventilation from the exterior open space, the width of such exterior open space as given in col 3 may be reduced by 1 m subject to a minimum of 3 m and a maximum of 8 m. No further projections shall be permitted.

3 If the length or depth of the building exceeds 40 m, add to col (3) 10 percent of length or depth of building minus 4.0 m.”

(emphasis supplied)

Para 8.2.3.2 provides as follows:

“8.2.3.2 For tower like structures, as an alternative to 8.2.3.1, open spaces shall be as below:

(a) Up to a height of 24 m, with one set-back, the open spaces at the ground level shall be not less than 6 m;

(b) For heights between 24 m and 37.5 m with one set-back, the open spaces at the ground level, shall be not less than 9 m.

(c) For heights above 37.5m with two set-backs, the open spaces at the ground level, shall be not less than 12m; and

(d) The deficiency in the open spaces shall be made good to satisfy 8.2.3.1 through the set-backs at the upper level;: these set-backs shall not be accessible from individual rooms/flats at these levels.”

(emphasis supplied)

61 Para 8.2.3.1 of NBC 2005 indicates that where the height of the building is 55 mtrs. and above, the side and rear open spaces to be left around the building must be 16 mtrs. Note 3 indicates that if the length or the depth of the building exceeds 40 mtrs., in addition to the height which is specified in column 3, ten per cent of the length and the depth of the building minus 4 mtrs. has to be added to the distance required. Thus, in the case of a height (as in the present case) of 55 mtrs. and above, an additional 8.45 mtrs. (10 per cent of 84.5 mtrs.) is added to the 16 mtrs. and 4 mtrs is to be deducted, arriving at a 20.45 mtrs. distance requirement. However, an alternative is provided by para 8.2.3.2 for “tower like structures”. For heights above 37.5 mtrs., open spaces at the ground level shall not be less than 12 mtrs. Further, deficiencies in open space as required under Para 8.3.2.1, can be met through set-backs at the upper levels, subject to the condition that the set-back shall not be accessible from the individual rooms/flats at these levels.

D.1 Violation of NBR 2006 and 2010

D.1.1 Interpretation of “building blocks”

62 The first aspect which needs to be considered is whether T-17 and T-1 are two adjacent building blocks or form part of a single building block as claimed by the appellant. Regulation 33.2.3 of the NBR 2006 stipulates that the distance between the two adjacent building blocks shall not be less than half of the height of the tallest building.

63 The submission of Mr Vikas Singh, learned Senior Counsel, as well as of Mr Ravindra Kumar, appearing on behalf of NOIDA, is that Regulation 33.2.3 of the NBR 2006, which was in force when the second revised plan was sanctioned on 26 November 2009 (contemplating the construction of T-16 and T-17), stipulates a distance between “two adjacent building blocks”. Mr Vikas Singh submitted that it is entirely the discretion of the developer to determine as to whether one or more buildings should be treated as a building block, there being no definition of the expression “building blocks” in NBR 2006. It has been urged that the appellant is entitled to assert that the sanctioned plan consists of building blocks, and that T-16 and 17 are part of a building block along with T-1, T-2, and T-3. Thus, it has been submitted that all these towers (T-1, T-2, T-3, T-16 and T-17) constitute one single building block. To buttress this submission, the space frame connecting T-1 and T-17 is referred to. It has been urged that there is no necessity of maintaining the minimum distance provided by Regulation 33.2.3, which applies only to the distance

between two adjacent building blocks, and since T-1 was to be connected to T-17 by a space-frame, the two new towers (T-17 and T-16) would constitute a part of the same building block, thus obviating the need of maintaining a minimum distance between them. This argument was sought to be supported by adverting to the original Hindi version of Regulation 33.2.3, which uses the expression “दो भवन समूहों के बीच की दूरी”. In this context, it has been submitted that after the NBR 2010 came into force, there was an increase in the height of T-16 and T-17 from twenty-four to forty floors. Regulation 24.2.1.(6) of the NBR 2010 has also used the expression “two adjacent building blocks”. Thus, based on both the NBR 2006 and 2010, it has been urged that the appellant was entitled to treat T-16 and T-17 as forming a part of a cluster which would include T-1. Therefore, the submission is that since all of them constitute a single building block, the minimum distance requirement need not be maintained.

64 The submission which has been urged on behalf of the the appellant finds support in the arguments of Mr Ravinder Kumar, learned Counsel appearing on behalf of NOIDA. The submissions which have been made on behalf of NOIDA highlight the following features:

- (i) Apart from the English version of Regulation 24.2.1.(6) of the NBR 2010, which uses the expression building blocks, the Hindi version uses the terms “भवन समूह”, which emphasises the concept of a cluster of buildings;

- (ii) When the Regulations speak of a “भवन समूह”, it is not the distance between the towers but the distance between blocks which is implicated;
- (iii) T-1, T-16 and T-17 form part of one cluster or block and hence there is no need of maintaining a distance between buildings forming part of a block;
- (iv) The absence of a minimum distance between the T-1 and T-7 would be of no consequence;
- (v) Apart from the alleged breach of the minimum distance requirement, all parameters have been maintained, in terms of:
 - a. Ground coverage;
 - b. FAR;
 - c. Open area; and
 - d. Green area; and
- (vi) An explanatory note was submitted by NOIDA before the High Court, concerning the issue of building blocks, and is extracted below:

“Building Block in a Group Housing Project

Main Points:

1. Noida Building Regulations, 2010: A “Bhavan Samuh” which is translated in English as a “Building block” is the combination or a group of buildings in any given area/Plot.
2. The Section 3(g) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership, Maintenance) Act, 2010 defines building. As per the Act, “building” means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, each containing two or more apartments with a total of four or more apartments in all such buildings; Provided that an independent house

constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.

Therefore, it is clear that the Block is designated as “two or more buildings in any area” and the building is defined as “four or more apartments on any land”.

3. As per Zoning Glossary of New York City Planning; *“A Block” is defined as a tract of land bounded on all sides by streets by a combination of streets, public parks, railroad rights of way, pierhead lines or airport boundaries. Building is defined as a structure that has one or more floors and a roof, is permanently affixed to the land and is bounded by open areas or the lot lines of a zoning lot.*
4. The buildings in a block may not be connected, may be partially connected or may be fully connected, as is clear from the aforesaid provisions.
5. It is a common practice in all the metropolitan cities of India and all over the world to construct high rise buildings for different purposes to make optimum utilization of land. In any given area, more open & green space can be provided only with a provision of high rise buildings which enable to accommodate high density comparatively with less ground coverage and more open space. Large size projects generally have many buildings which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in event of any emergency. In view of all these considerations generally different building blocks or groups of buildings having interconnected accessibility, facilities and services are designed, which give better living environment than having a system of all buildings situated in isolation within the project area. It is common practice in all the metropolitan cities of India and over world to construct high-rise building for different purpose to make optimum utilization of land. In any given area more open & green space can be provided only within a provision of high-rise building which enable to

accommodate high density comparatively within less ground coverage and more open space. Large size projects generally have many building which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in the event of any emergency. In view of all these considerations generally different building blocks or cluster of building having inter connected accessibilities & facilities are decided, which give better living environment than having a system of all building situated in isolation within the project area.

6. Isolated buildings are more prone to safety, security, provision and maintenance of common services related problems. In case of a fire accident in any isolated building having no extra exit routes, chances of danger to human lives is more.
7. Generally, a group of buildings in a project is constructed with the provision of common basement i.e. One basement for all the buildings. This is done for better accessibility and movement and provision of common facilities. It is also a very common practice in India and abroad to connect the high rise buildings by way of space frame bridges giving additional exit routes for early evacuation in the event of emergency. This practice has increased after the occurrence of incident of fire in Gopal tower in Connaught Place, New Delhi and the temporary space frame was made connecting the said tower at the Height with nearby tower for evacuation of cornered persons saving many lives.
8. NBC OF INDIA OF 2005: Side and rear open space for different height of building is governed as per Para 8.2.3.1 of NBC 2005 which states that for height of building.

Height	Side and Rear Open Space
35 Mtr	11 Mtr
40 Mtr	12 Mtr

55 Mtr & above	16 Mtr

But as per Para 8.2.3, tower like structures as an alternative to Para 8.2.3.1 open space as below:

For height between 24 Mtr nd 37.50 Mtr with one set back the open space

At the ground level, shall not be less than 9 Mtr.

9. It is stated that NOIDA Building Regulations intends to provide the distance between two adjacent building blocks to be between 6 meter to 16 meter depending upon the height of the building blocks. It does not provide any specific requirement of distance between two buildings. The concept of minimum distance required between two High Rise building of a block may not necessarily be the same as required between the two building blocks. For Example a building block may have three or four stories for the entire block area and few towers of different height and different upper stories designed at different places in the same block.
10. The concept of minimum distance between the two building blocks is for the purpose of free fire tender movement (Minimum 6 meters setback as per regulation), air ventilation, sunlight etc. The minimum distance requirement is in no way connected with the structural safety of the building.
11. It is stated here that the new building under construction is having perimeter of approx. 230 meter the entire building is surrounding by enough open area i.e. more than 16 meter except at one place where the building is made a part of block of adjoining building by way off a proposed connecting bridge to provide an extra exit route for the purpose of emergency evacuation. Here also the minimum gap between old building and new building is 9 meter for 6.80 meter length with satisfies the requirements of fire safety provisions. It does not violate any provision with regards to fire safety and air circulation."

65 Essentially, the plea both on behalf of the appellant and NOIDA is that the requirement of maintaining a minimum distance applies only to adjacent building blocks, which is not equivalent to adjacent buildings. To put it differently, the arguments proceed on the basis that where there is a cluster of buildings the requirement of a minimum distance cannot be observed as between buildings forming part of the cluster, but only as between two adjacent building blocks/clusters. Each building block in this line of argument may consist of a collection of buildings, and it is argued that neither NBR 2006 nor NBR 2010 mandates the maintenance of a minimum distance as between buildings in a cluster.

66 The expression 'building block' has not been defined either in NBR 2006 or in NBR 2010. The construction which is placed upon the content of the expression must advance the object and purpose of the said Regulations. The purpose of stipulating a minimum distance is a matter of public interest in planned development. The residents who occupy constructed areas in a housing project are entitled to ventilation, light and air and adherence to fire safety norms. The purpose of stipulating a minimum distance comprehends several concerns. These include safeguarding the privacy of occupants and their enjoyment of basic civic amenities including access to well-ventilated areas where air and light are not blocked by the presence of close towering constructions. Access to these amenities is becoming a luxury instead of a necessity. The prescription of a minimum distance also has a bearing on fire safety. In the event of a fire, there is a danger that the flames would rapidly spread from one structure to adjoining ones. Moreover, the presence of

structures in close proximity poses serious hurdles to fire-fighting machinery which has to be deployed by the civic body.

67 If a developer is left with the unbridled discretion to define the content of the expression “building block”, this will defeat the purpose of prescribing minimum distances, leaving the health, safety and quality of life of flat buyers at the mercy of developers. Before this Court, an argument has been advanced that four towers out of the seventeen towers in the plot are a part of one “building block” and do not require maintenance of a minimum distance. Before the High Court, the appellant attempted to argue that all the buildings (that is all seventeen towers) on Plot No 4 of Sector 93A NOIDA would comprise of one “building block”. The inconsistency of the appellant’s argument on building blocks before the High Court and this Court points out the obvious flaw in it – that the designation of how many buildings constitute a “building block” by the developer would undermine the requirements prescribed by Building Regulations. As a matter of first principle, we are not inclined to adopt the construction proposed by the appellant. It will deprive the residents of urban areas of the amenities of light, air and ventilation which are essential to maintaining a basic quality of life. It will also have serious ramifications on fire safety. The developer cannot be allowed to subvert the requirement of maintaining minimum distances prescribed in the Building Regulations by unilaterally designating independent towers as building blocks, in the manner which the appellant has suggested before this Court. Setting up a space frame or providing for a common entry or exit would not make two otherwise separate buildings as one consolidated block.

68 Regulations 33.2.3 of the NBR 2006 refers to the distances between adjacent 'building blocks' which shall not be less than half of the height of the tallest building. The purpose of this regulation is not to apply it only as between building blocks as distinguished from buildings within a block. Clause (1) of Regulation 33.2.3 has used the expression 'building blocks' and 'height of tallest building' in the same sentence. These expressions must be given a meaning which accords with common sense and in furtherance with the object and the purpose of the said Regulation. The plain meaning of the expression is that when there are two adjacent blocks, the height of the tallest building will determine the distance required to be observed, with the distance being not less than half the height of the tallest building. Consequently, when two or more buildings exist in proximity together, they comprise of a building block within the meaning of Clause (1) of Regulation 33.2.3. In such an eventuality, the distance between each of the buildings comprised in the block shall also not be less than half of the height of the tallest building. The reference to the height of the tallest building is evidently made because this kind of a building will likely overshadow the buildings of a lesser height in a cluster of proximate construction. Therefore, the regulation has defined the minimum distance required with reference to half the height of the tallest building. Any other construction will defeat the purpose of Regulation 33.2.3 and cannot be accepted.

69 Applying the NBR 2006 to the facts of the present case, the construction of T-16 and T-17 was envisaged in the second revised plan dated 26 November 2009. The height of the said towers was to be 73 mtrs., while the height of other towers,

including T-1, was to be 37 mtrs. Thus, as per Regulation 33.2.3 of the NBR 2006, the minimum distance between T-17 and T-1, should be half of the height of the tallest building, that is, half of the height of T-17 which is 36.5 mtrs. It is evident from the record that the distance between T-1 and T-17 is 9 mtrs. only. Thus, clearly the second revised plan was violative of the NBR 2006.

70 We shall now come to the NBR 2010. Regulation 24.2.1(6) has prescribed the requirement of maintaining varying distances between two adjacent blocks from a minimum of 6 mtrs. extending up to 16 mtrs., depending on the height of blocks. The content to the first sentence of this regulation is further amplified by what follows it. The next part of the regulation stipulates that for a building of height up to 18 mtrs., “spacing” shall be 6 mtrs. The expression “spacing” in its plain terms means the observance of a stipulated distance. Where the height of the building is up to 18 mtrs., “the spacing” shall be 6 mtrs. Thereafter, for a height above 18 mtrs., the minimum distance has to be increased by one meter for an additional height of three mtrs. subject to a maximum distance or spacing of 16 mtrs. “as per National Building Code – 2005”.

71 Mr Ravindra Kumar, learned counsel appearing on behalf of NOIDA, has particularly laid emphasis on the Hindi version of the NBR 2010 to argue that it used the term “भवन समूह”, which must mean that a separate meaning is accorded to it than the term “भवन”. The Hindi text of Regulation 24.2.1.(6) (Regulation 24.2.1 (V) in the Hindi version) is as follows:

(V) दो अगल बगल के भवन खंडों के बीच की दूरी

दो अगल बगल के भवन खंडों के बीच की दूरी न्यूनतम 6.00 मीटर से 16.00 मीटर तक रखी जाएगी, जो भवन समूह की ऊँचाई पर निर्भर होगी । 18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी तथा हर तीन मीटर की ऊँचाई पर भवनों की दूरी 1.00 मीटर रखी जाएगी । तथापि अधिकतम दूरी नेशनल बिल्डिंग कोड.-2005 के अनुसार 16.00 मीटर रखी जाएगी । यदि भवन खंडों के बन्द हिस्से वाले भाग आमने समाने हो तो भवन खंडों के बीच की दूरी अधिकतम 16.00 मीटर के स्थान पर 9.00 मीटर रखी जाएगी । तथापि आबंटी द्वारा दो भवन खंडों के बीच की दूरी 16.00 मीटर से अधिक रखी जा सकती है ।

As is evident, the Hindi version of the NBR 2010, uses three different terms “भवन खंडो”, “भवन समूह”, and “भवन”. A purely textual interpretation, as is suggested by Mr Ravindra Kumar, would lead us to ascribe three different meanings to each of these terms. Extending this argument would then imply that the first sentence, which states that two adjacent building blocks require a minimum distance of 6 mtrs. to a maximum distance of 16 mtrs., will depend on the height of the blocks. The second sentence, which in English simply reads, “for building height upto 18 mtrs, the spacing shall be 6 mtrs...”, does not clarify what the term “spacing” denotes – does it imply spacing between buildings *inter se* the block, or spacing between adjacent ‘building blocks’. Mr Ravindra Kumar suggests that it implies the latter. However, looking at the Hindi version of the Regulations from a purely textual standpoint, it would appear that it states that the spacing between the buildings of height 18 mtrs. should be 6 mtrs., that is, “18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी ...”. The term used here is “भवनों” and not “भवन खंडो” or “भवन समूह”. Thus, overemphasis on the text of the NBR 2010, while losing sight of the context and the purpose of the regulation, would lead to an absurd interpretation. Where the initial

part of Regulation 24.2.1.6 provides for distance between building blocks, the latter part stipulates the distance between buildings of height above 18 mtrs. Accordingly, we reject the argument of Mr Ravindra Kumar that Regulation 24.2.1.6 only provides for the distance between 'building blocks' and not buildings within the blocks.

72 The latter part of Regulation 24.2.1.6 of the NBR 2010 provides that the maximum spacing between buildings of a height above 18 mtrs. shall be 16 mtrs. as per the NBC 2005. In the third revised plan dated 2 March 2012, the height of T-16 and T-17 was increased to 121 mtrs. In accordance with Regulation 24.2.1.6, the spacing between a building of height 121 mtrs. and another building would be 16 mtrs. (the maximum limit as per NBC 2005). Thus, the distance between T-1 and T-17 should have been 16 mtrs., as opposed to 9 mtrs. Consequently, we find that the third revised plan dated 2 March 2012 was in violation of NBR 2010.

73 NOIDA, before it granted sanction for enhancing the height of T-16 and T-17 from G+24 to G+40 (or 39, as the case may be), was duty bound to apply its mind to whether there was a compliance with the provisions of Regulation 24.2.1.6. The third revised plan which was sanctioned on 2 March 2012 has evidently glossed over the clear deficiency of open space with reference to the NBR 2010, the consequence of which would have been to reject the proposal for a further increase in the height of the towers from twenty-four floors to forty floors. Yet NOIDA has chosen to lend its support to the appellant in clear defiance of the provisions of law.

74 The issue as to whether T-1, together with T-16 and T-17, form one cluster can be looked from another perspective to test the hypothesis of Mr Vikas Singh.

The original sanctioned plan dated 20 June 2005 provided that:

"Total area of plot	:	48263.00 Sq. mt
Permissible coverage 35 %	:	16892.05 Sq. mt
Sanctioned coverage 14.03%	:	6773.25 sq. mt
Permissible FAR 1.50	:	72394.50 Sq. mt
Sanctioned FAR 134.28	:	64810.04 Sq. mt.
Sanctioned height of building	:	30.00 meter

SET BACK

SET BACK OF BUILDING

Permissible · Sanctioned

Front	9.66 Mt	15.00 Mt
Back	9.66 Mt	09.70 Mt.
Side	9.66 Mt	09.70 Mt.
Side	9.69 Mt	09.70 Mt."

75 The original sanctioned plan covered a total plot area of 48,263 sq. mtrs. Subsequently, an additional area of 6556.61 sq mtrs. was leased out to the appellant by a Supplementary Lease Deed dated 21 June 2006, so as to enhance the total area of the plot to 54,819.51 sq. mtrs. As a consequence, the first revised plan was sanctioned on 29 December 2006, where the sanctioned area was enhanced from 64,810.04 sq. mtrs. to 81,943.216 sq. mtrs., the calculations being as follows:

"Sanctioned area

Total area of plot : 54819 Sq. Mt

Floor	Existing	Addition	Total

Ground Floor	6773.25 Sq. Mt.	1025.313 Sq Mt	7798.563 Sq. Mt
First Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Second Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Third Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Fourth Floor	6672.17 Sq. Mt	778.737 Sq Mt	7450.907 Sq. Mt.
Fifth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Sixth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Seventh Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Eighth Floor	6522.89 Sq. Mt	- 28.294 Sq Mt	6494.596 Sq. Mt
Ninth Floor	4808.71 Sq. Mt	1685.886 Sq Mt	6494.596 Sq. Mt
Tenth Floor		6312.410 Sq Mt	6312.410 Sq. Mt.
Eleventh Floor		4448.677 Sq Mt	4448.677 Sq Mt
Commercial		411.15 Sq Mt.	411.15 Sq Mt.
Total	64810.04	17133.176	81943.216
Basement : 32352.71 + 8189.67 = 40542.38			
Total	97162.75	25528.41	122485.60

76 The first revised plan dated 29 December 2006 relating to 6556.61 sq. mtrs. indicates that in the south-west corner of the plot, an additional construction comprising of one tower and a shopping facility would be put up and directly opposite T-1 was a green area, which has been depicted on the sanctioned plan.

77 On 26 November 2009, there was a second revised sanction, consequent upon the acquisition of purchasable FAR of thirty-three per cent of the permissible 1.5 FAR. The area calculations of the second revised sanction were indicated as follows:

"Area of plot : 54819.510 Sq. Mt.
 Permissible FAR 1.50% : 82229.265 Sq. Mt.
 Purchasable FAR 33% : 27135.657 Sq. Mt.
 Total FAR 82229.265 + 27135.657 = 109364.922 Sq. Mt.
 Area of utilization issued earlier: 78019.956 Sq. Mt

Area of upper basement issued earlier:

40542.380 sq Mt. (3397.0990 with demolished upper basement)

Floor	Permissible area (Sq. Mt.)	Proposed Area (Sq. Mt.)
Ground Floor	19186.82	1751.320
First Floor	Rest FAR	228.230
Second Floor		2249.220
Third Floor		2249.220
Fourth Floor	.....	2249.220
Fifth Floor	.....	2249.220
Sixth Floor	.....	2249.220
Seventh Floor	.....	2249.220
Eighth Floor	.....	2249.220
Ninth Floor	.....	2249.220
Tenth Floor	.....	1358.786
Eleventh Floor	.....	1186.914
Twelfth Floor	.....	740.162
Thirteenth Floor	.....	740.162
Fourteenth Floor	.....	740.162
Fifteenth Floor	.....	740.162
Sixteenth Floor	.....	447.955
Seventeenth Floor	.....	447.955
Eighteenth Floor	.....	447.955

Nineteenth Floor	.....	447.955
Twentieth Floor	.....	447.955
Twenty first Floor	.....	383.168
Twenty second Floor	.....	383.168
Twenty third Floor	.....	383.168
Twenty fourth Floor	.....	383.168
TOTAL FAR	.....	31312.081
Upper basement	.....	3397.090
Lower basement	40542.38	3397.090
Total Area		43939.470

Set back	Permissible	Sanctioned
Front	15.00 Mt	15.00 Mt
Back	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt

78 As the second revised plan indicates, the existing towers now envisaged twenty-four floors instead of eleven floors. The third revised plan of 2 March 2012 further envisaged an enhancement in the constructed area consequent upon a purchasable FAR, together with the sanctioned FAR of 2.75. The number of floors was further increased to forty floors in T-16 and T-17, the relevant calculations being as follows:

"Total area of plot : 54819.510 Sq. mt
 Permissible coverage 35% : 19186.828 Sq. mt
 Sanctioned coverage 14.03% : 6773.25 sq. mt

Permissible FAR @ 1.5% : 82229.265 Sq. mt
 at the time of allotment
 Purchasable FAR on 25.10.10: 150753.652 Sq. mt
 With Sanctioned FAR @ 2.75

Floor wise Description of Proposed area of different floors are
 as under

Floor	Permissible area (Sq. Mt.)	Built up area (tower 1 to 14) on 16.10.09 utility certificate issued. Sq. Mt	Previous sanctioned area tower 15, 16 & 17 date 26.11.09	Proposed FAR tower 15, 16 & 17 (Sq. Mt.)	Revised area tower 15, 16 & 17 (Sq. Mt.) (3 +4)	Total area (Sq. Mt.) (2 +5)
	1	2	3	4	5	
Space frame	--	--	--	24.00	24.00	24.00
Podium (T-1 to T-14)	--	288.983	--	--	--	--
Ground Floor	19186.825	6823.429	1751.320	1125.302	2876.622	9700.051
1 st Floor	Rest FAR	6722.349	2288.230	78.075	2366.305	9088.654
2 nd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
3 rd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
4 th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
5 th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
6 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
7 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
8 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
9 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
10 th Floor		6423.737	1358.786	878.037	2236.823	8660.560
11 th Floor		3982.669	1186.94	910.301	2097.215	6079.884
12 th Floor			740.162	851.205	1591.367	1591.367
13 th Floor			740.162	851.205	1591.367	1591.367
14 th Floor			740.162	851.205	1591.367	1591.367
15 th Floor			740.162	851.205	1591.367	1591.367
16 th Floor			447.995	1162.568	1610.523	1610.523
18 th Floor			447.995	1162.568	1610.523	1610.523

19 th Floor			447.995	1162.568	1610.523	1610.523
20 th Floor			447.995	1165.568	1610.523	1610.523
21 st Floor			383.168	1610.523	1610.523	1610.523
22 nd Floor			383.168	1610.523	1610.523	1610.523
23 rd Floor			383.168	1610.523	1610.523	1610.523
24 th Floor			383.168		1610.523	1610.523
25 th Floor				1610.523	1610.523	1610.523
26 th Floor				1610.523	1610.523	1610.523
27 th Floor				1610.523	1610.523	1610.523
28 th Floor				1610.523	1610.523	1610.523
29 th Floor				1610.523	1610.523	1610.523
30 th Floor				1610.523	1610.523	1610.523
31 st Floor				1610.523	1610.523	1610.523
32 nd Floor				1610.523	1610.523	1610.523
33 rd Floor				1610.523	1610.523	1610.523
34 th Floor				1610.523	1610.523	1610.523
35 th Floor				1610.523	1610.523	1610.523
36 th Floor				1610.523	1610.523	1610.523
37 th Floor				1610.523	1610.523	1610.523
38 th Floor				1610.523	1610.523	1610.523
39 th Floor				859.055	859.055	859.055
40 th Floor				439.106	439.106	439.106
Total FAR	150753.65 2	78019.956	31312.105	41132.600	72444.705	150464.66 4
Basement		After leaving set back, rest area (for parking, services)				
Upper basement		40542.38	3397.09	1511.144 41.680		42053.524 3438.770
Lower basement		40542.38				45942.294
Total area			3397.09	1552.824		
Services	15% services	Zero	Zero	6396.896		6396.896
Total area (including		118562.33 6	34709.195	49082.32	83791.515	202353.85 4

basement and services)						

Proposed land coverage area = 10648.503 Sq. Mt. (19.425%)

Revised FAR (Built + Revised) = 150464.664 Sq Mt.”

79 On 24 April 2012, the CFO drew the attention of the In-Charge of the Building Cell, NOIDA to the violation of the minimum distance which was required to be maintained in the construction which was being carried out by the appellant. The subject of the letter reads thus:

“Regarding distance between the under construction (Tower No. 17) situated at Plot No. 4, Sector-93A NOIDA being constructed by M/s Supertech Limited and old constructed buildings”

The letter (which has been extracted above para 28 of Part A.5) has a crucial bearing on these proceedings. The CFO made a clear reference to the distance requirements which were to be observed in terms of NBR 2006, NBR 2010 and NBC 2005. The CFO queried NOIDA as to whether the license for construction was granted after granting a relaxation to the builder in a “special category” or whether the construction was being carried out contrary to the standards. This letter evinced no response from NOIDA.

80 When the construction of two towers in the newly acquired leasehold area commenced in July 2009, a communication dated 16 July 2009 was addressed on behalf of the appellant (by its Director) to the Group Co-coordinator of Emerald Court (the letter has been extracted in para 15 of Part A.4). Evidently, the residents

were concerned about the construction of the new towers. The said letter clearly demonstrates that in 2009, the appellant was of the view that the new towers which were being constructed would have separate entries and exits, amenities and infrastructure and that the developer would construct a boundary wall separating the existing 15 towers from Apex and Ceyane. This representation was reiterated in a letter dated 9 March 2012 from the appellant to the President of the RWA.

81 The first paragraph of the above letter indicates that the appellant had obtained two separate plots admeasuring approximately 48,650 sq. mtrs. and 6556.61 sq mtrs., and had got them registered separately in March 2005 and May 2006. The representation to the residents that these were separate plots which were leased out to the developer was clearly contrary to the provisions of the supplementary lease deed which stipulated that the newly demised area of 6556.61 sq. mtrs would form a part of the original plot which had been allotted to the appellant. The supplementary lease deed contains the following covenants:

“[...]

That the Lessor has agreed to demise on lease in additional place of land measuring 6556.61 Sq. mtrs. Against consideration of Rs.14,48,98,871/- (Rupees Fourteen Crores forty eight lacs ninety eight thousand eight hundred seventy one only) which has been already been paid by the lessee to the lessor and also in consideration of the yearly lease rent @1 % of the total premium per year Rs.1,59,38,876 for enhanced area has been paid by the Lessee to the Lessors as one time lease rent (equal to 11 year's lease rent). That the demised premises shall be deemed to be part of the Plot No.04, Sector 93-A, Noida already leased to the lessee.

That all other conditions of the original lease deed and allotment shall remain unchanged and shall be equally

applicable to this demised premises and binding upon the lessee.

That the period of 90 years lease shall commence from 16.03.2005.

That the demised premises shall be part of the original allotted Plot No. 04 Sector Noida. Necessary addition or alterations in the structure can be subject to the building byelaws of the lessor and terms of the transfer lease deed.

That total area of Plot No. 94, Sector 93-A, Noida is 54819.51 Sq. mtrs.

That the total premium of Plot No. 04, Sector 93-A is Rs.1,21,15,11,171/- (Rupees One hundred Twenty one crores fifteen lacs eleven thousand and one hundred and seventy one only) instead of Rs.1,06,66,12,000/- (Rupees One hundred six crores sixty six lacs twelve thousand and three hundred).

The lessee shall construct the building on the demised premises according to the building bye laws of the Lessor."

Despite the clear terms of the supplementary lease deed in terms of which the additional land allotted under it is to form a part of the original plot, the communication addressed to the flat buyers of the existing towers was that the new towers were completely disconnected from and independent of the earlier developed fifteen towers. This letter cannot be glossed over because a similar position was affirmed before the High Court in paragraph 32 of the counter affidavit filed by the appellant, which reads as follows:

"32. That the contents of para 12 so far it relates to matter of record are need no reply and other contents are wrong and denied. The letter dated 16.07.2009 and 09.03.2012 given by respondent no. 5 contains the same stand, that "Apex and Ceyane" is Phase II of the project as in the present counter affidavit. Similarly, letter dated 31.01.2012 and 13.02.2012 filed by respondent no.5 before police authorities can be relied upon in support of the stand of respondent no.5."

82 The only reasonable hypothesis which emerges from the above disclosures is that the argument which has now sought to be advanced – that Towers 1, 16 and 17 are part of a cluster of buildings comprised within a block, thus obviating the need to maintain the minimum distance between them – is an afterthought. It is contrary to the stated position which has been adopted by the appellant in its affidavit before the High Court. The record before this Court also indicates that the appellant has taken liberties with the truth in making the submission that a cluster of towers in the project constitutes a block which allows the appellant to subvert the minimum distance requirement.

83 The above conclusion is clearly evident from the record from IA No 54807 of 2021 for the production of additional documents. Annexures A-1, A-2, A-3 and A-4 are:

- (i) A true copy of the first revised plan dated 29 December 2006 showing various blocks as sanctioned by NOIDA;
- (ii) A true copy of an allotment letter dated 17 March 2007 issued by the appellant in favour of a flat purchaser;
- (iii) A true copy of the completion map dated 10 April 2008 in relation to T- 1 to 8; and
- (iv) A true copy of the completion map dated 16 September 2009 in relation to T- 9 to 14.

84 Annexure A1 above, which is part of the first revised plan of 2006, clearly indicates that each block comprises of a cluster of two buildings. Annexure A2, which is the letter of allotment, makes it clear that what is meant by a block was the Tower comprised of Aster II. Moreover, the letter also indicates the recovery of lease rent at Rs 190 per sq. foot. Annexure A-3, the completion drawing of 2008, indicates that each tower is depicted to have four wings. In other words, the tower itself is a block comprising of four wings and the towers have been specified distinctly with reference to numbers. During the course of the proceedings before the High Court, the appellant filed a document purported to be the second revised plan of 2009 where a depiction of several blocks was made. The plan which was filed before the High Court bears no signature of the competent officer of NOIDA. In the counter affidavit filed by the appellant in the High Court, it was stated that:

“3. That Noida Building Bye-laws talks about building blocks. Even the mandatory distance is provided only between the two building blocks in the said bye-laws. It is stated that Cluster of buildings from one building block, provided these buildings are connected with each other to form one building block. Further number of buildings within one building block depends upon various factors like the theme of the project its Architecture features surrounding, plot dimensions etc.

4. The Emerald Court (phase I) has five building block each comprising of three buildings. After acquisition of additional land, admeasuring 6556 sq.mt. Apex & Ceyane (phase II) was envisaged and the same was sanctioned by NOIDA. With the provision of space frame between tower Apex and Aster-2 as per sanction plan dated 26.11.2009 by NOIDA, the Apex & Ceyane were connected within the existing building block comprising of towers Aster-2, Aspire-1 and Aster-1 as per Architecture feature of the project. The sanction dated 26.11.2009 was granted by NOIDA only after structural safety certificate was issued by the IIT-Roorkee.

Copy of the sanctioned plan showing the Building block is annexed herewith as ANNEXURE SCA-1."

(emphasis supplied)

85 In the rejoinder filed to the above affidavit on behalf of the RWA, the contents of the above plan were seriously disputed and it was averred:

"5. That the contents of paragraph 4 of the supplementary counter affidavit are incorrect as Aster Type-A was already envisaged on the additional land measuring 6556 sq. mtrs. along with certain green area as is evident in the plan approved by NOIDA in Dec. 2006 (Annexures 2 of WP) on total area of the plot viz. 54800sq. mt.

The respondent has submitted a document marked as SCA-1 which is called the sanctioned building plan. This is altogether a new document submitted by respondent 5 and is a shocking surprise to the petitioner as this has never ever been disclosed nor advertised in the past. The documents has glaring deviations as compared to the document shared and submitted in the past. For the first time respondent 5 has submitted a plan which contains reference to "BLOCKS". In the past such a document was never shared. Also now each tower is given only a tower number and the nomenclature used in title documents and popular usage has been deleted viz Aspire/Aster/ Emperor etc. This is an alarming misnomer being created by respondent 5. Also, nowhere this bears the sanctioning endorsement by NOIDA (Respondent No. 2) terming as BLOCK 1 to 5. It is amply clear that respondent 5 is using false representation and documents and trying to create confusions on flimsy ground. They are trying to buy time and attention of this Court and using these as delaying tactics, which is against the interest of petition. With the delaying tactics respondent 5 is rapidly proceeding with unauthorized construction of APEX and CYNE towers day and night, especially after filing of writ petition by the petitioners, as no injunction has been issued so far. Respondent 5 has been and will be using the public interest plea of investors and financial institutions/banks to

cover up illegal and unauthorized construction as is evident from Para 19 of the supplementary counter affidavit.”

(emphasis supplied)

86 Significantly, it must be noted that the second revised plan of 2009, which has been placed on record, does not show the existence of blocks and is duly endorsed by NOIDA. Similarly, the third revised plan of 2012, which is also on the record, does not embody any description of blocks. Therefore, we have no manner of doubt in finding that the argument sought to be developed in the course of these proceedings that there were separate blocks in the plan is an afterthought. It is contrary to the stated position which has been adopted by the appellant on affidavit before the High Court. It is contrary to the sanctioned plans. What is worse is that an effort was made to place on the record before the High Court a purported plan of dubious origin by seeking to pass it off as the second revised plan of 2009.

87 In its affidavit before the High Court, the appellant stated that:

“9. That it is pertinent to mention here that the Phase II of the project by the name of “Apex and Ceyane” has been planned to have provision of altogether separate facilities like swimming pool, gymnasium, separate power backup, separate L.T. Panels and separate entry and exits gates etc. Therefore the members of petitioner society of Emerald Court (Phase I) does not have any locus to challenge any issue relating to the towers of “Apex and Ceyane” (Phase II).”

(emphasis supplied)

88 The above averments would belie the submission sought to be advanced before this Court that Apex and Ceyane are parts of a cluster of buildings comprised within one block. The High Court, while rejecting the submission, observed:

“Learned counsel for the respondent-company finally made an attempt to argue that the phrase “building blocks” is not defined under the byelaws and according to the learned senior advocate building blocks would mean the entire building on plot no. 4 of Sector 93A NOIDA. The said argument is farfetched and against the provisions of the Building Regulation of 2006 as well as 2010. Building blocks means group of building on the plot/site. The sanctioned maps clearly shows that the respondent company has got the layout approved consisting of separate blocks. The nomenclature of the blocks was subsequently changed by the respondent company, in each successive plan and finally the buildings were numbered as towers (1-17). The maps sanctioned clearly shows that the buildings in dispute Aster II (tower 1) and Apex and Ceyane (tower 16 and 17) are separate building blocks. The argument has been advanced without there being any foundation in the pleadings. Without pleadings argument cannot be advanced.”

89 Based on the interpretation of ‘building blocks’ in the Building Regulations as discussed above, and the inconsistency in fact and in the argument of the appellant, we affirm the above conclusion of the High Court.

D.1.2 Interpretation of “dead end sides of buildings”

90 An alternative argument has been advanced by Mr Ravindra Kumar, counsel for NOIDA, that Regulation 24.2.1.6 of the NBR 2010 provides for an exception to the 16 mtrs. minimum distance requirement if the building blocks have dead-end sides facing each other. It stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a minimum of 9 mtrs. instead of 16 mtrs. Mr

Ravindra Kumar submitted that T-1 and T-17 have dead-end sides facing each other and thus, the distance requirement of 16 mtrs. was not applicable. The “dead-end” argument has met a dead-end in the submissions of the appellant as during the proceedings. Mr Vikas Singh, learned Senior Counsel for the appellant, has specifically clarified that he is not pressing the submission. We will however deal with it as the counsel appearing for NOIDA has raised it before this Court.

91 Regulation 24.2.6 of the NBR 2010 stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs. The question of dead-end sides arises only between blocks, in which case the minimum distance required is 9 mtrs.

92 This Court on 27 July 2016 directed the NBCC to ascertain if the dead-end sides of T-1 and T-17 are facing each other, in order to decide if the towers can be brought within the exception in Regulation 24.2.1(6) of NBR 2010. The terms of reference were as follows:

“To ascertain whether the two towers- Tower-1 (Aster 2) and Tower-17 have dead end sides facing each other for the purpose of Reg. 24.2.1(6) of Noida Building Regulations 2010.”

NBCC was tasked with the job of determining the meaning of the phrase ‘dead end sides facing each other’, and whether T-1 and T-17 could be brought within the exception. This Court also specifically directed that NBCC shall not travel beyond the issue that was referred to it.

93 The appellant filed its submissions before NBCC on the meaning of the phrase 'dead end side of a building'. It was submitted that:

- (i) Model Bye-Laws 2004, Model Bye-Laws 2016 and the Delhi Development Authority Building Byelaws 2016 have relaxed the 16 mtrs. distance rule to 9 mtrs. if there are 'no habitable rooms in the front', irrespective of the height of the building. A similar provision has been incorporated in NBR 2010 as well. However, instead of using the phrase "no habitable rooms in the front", the phrase "dead end" has been used. Therefore, the phrase "dead end" must take color from the bye-laws and will have to be interpreted to mean absence of 'habitable rooms'; and
- (ii) Clause 3.46 of NBR 2006 defines 'habitable room' as "a room occupied or designed for occupation by one or more persons for study, living, sleeping, eating, kitchen if it is used as a living room but not including bathrooms, water closet, compartments laundries, serving and storage pantries, corridors, cellars, attics and spaces that are not used frequently or during extended periods".

94 The term 'dead-end sides of a building' has not been defined in NBR 2006, NBR 2010, and NBC 2005. Regulation 3 of NBR 2010 states that words that are not defined in the Regulations shall have the meanings assigned to them in the UPIAD 1976. If no meaning is assigned to the word in UPIAD 1976, then the meaning assigned to the word in the Master Plan/Development Plan, Development Plan, National Building Code, Indian Standard Institution Code shall be referred to.

However, none of the above mentioned authorities define the phrase ‘dead end sides of a building’. Though, NBC 2005 uses the phrase in reference to dead end situation of road, corridor, water supply etc., no reference with respect to ‘dead end sides of a building’ is made.

95 Therefore, NBCC wrote to the Bureau of Indian Standards²³ and NOIDA on 3 September 2016 and 30 August 2016 respectively, seeking a clarification on the meaning of the phrase ‘dead end sides of a building’. BIS through a letter dated 9 September 2016 stated that the phrase was only used in NBR 2010 and not the NBC 2005 that was brought by BIS, and therefore, it was not best suited to provide an interpretation on the phrase. NOIDA vide a letter dated 30 August 2016 stated that it refers to “[a]n area/side of a building or a residence having no access/entrance or exit becomes a dead end area/side of the building, though it may have openings for ventilation”.

96 NBCC submitted its report on 13 October 2016. The report discusses the structure of T-1 and T-17, the meaning of the phrase ‘dead end side of a building’ and concludes that the sides of T-1 and T-17 facing each other are not dead end sides of the buildings. NBCC made the following observations on the structure of T-1 and T-17 after site verification:

- (i) The ground floor of T-17 is allocated for commercial shops. The remaining floors in T-17 will have residential flats with windows/balconies/ventilators on

²³ “BIS”

all sides. Except for one opening for a fire exit, there will be no opening on the ground floor on the side that faces T-1. However, all other floors (*i.e.*, except the ground floor) will have an opening on the side that faces T-1;

- (ii) The entry to T-17 is on the side that is perpendicular to the side that is facing T-1;
- (iii) The entry to the residential flats of T-1 is from the side facing T-17;
- (iv) T-1 has offsets. Therefore, the space between T-1 and T-17 varies from 9.3 mtrs. to 25 mtrs.;
- (v) The habitable rooms with balconies in T-1 and T-17 face each other; and
- (vi) T-1 and T-17 do not taper at the higher floor. None of the tower wings have different heights.

97 Since there is no clarity on the meaning of ‘dead end side of a building’, NBCC interpreted the phrase by referring to the use of the phrase ‘dead end’ in NBC 2005 in the context of roads, water supply network etc. where the passage is limited. The report stated that “a dead end exists in the corridor or passageway where there is only one direction to travel to an exit”. Using this meaning as a reference, NBCC interpreted the phrase of ‘dead end side of building’ to hold that T-1 and T-17 do not have dead end sides facing each other. Further, NBCC also observed that the distance between T-1 and T-17 does not comply with the distance rule specified in NBC 2005:

“6. The dead end sides, as per regulation 24.2.1 (6) of NBR 2010 would mean **where habitable rooms of the building do not face each other** and the distance between two

adjacent building blocks shall be 9 mtrs and otherwise it shall be 16 mtrs as per NBC 2005. **In the present case both the buildings i.e T-1 & T-17 have habitable rooms (with balconies) facing each other so these are not dead ends”.**

7. Whether the side of T-17 which is facing T-1 is its dead-end side:

(a) The T-17 has entry & exit routes on the sides perpendicular to the side facing T-1. Therefore, the side of tower T-17 which faces T-1 is not the front-side, and therefore, the ‘Building Separation’ between T-1 & T-17 should be guided by those clause(s) in NBC 2005 that guide(s) open spaces to the sides of a building.

(b) On the ground floor, tower T-17 has commercial space/shops which would be always busy/occupied with people for most of the time during a normal day.

(c) On higher floors it has balconies & terraces anchored to habitable rooms on all sides.

Inference: From (i), (ii) & (iii) above, the side of T-17 which faces T-1 would naturally have frequent human use & activity both during daytime and nighttime, every day of the year, for however short the durations, both on ground and on higher floors (balconies & terraces anchored to habitable rooms) on any normal day. Therefore, it may be safe to conclude it is not a dead-end side of T-17.

8. Whether the side of T-1 which faces T-17 is its dead-end side: The side of T-1 facing T-17 has three sections, and its middle section is offset further away from Tower T-17 while the two sections at the ends are in the same line. However, that section is the main entry/exit to the Tower. **The remaining portion of the side facing Tower T-17 is also not inactive since it has balconies & terraces anchored to habitable rooms and/or toilets.**

Inference: **The entry to tower T-1 is from the side facing Tower-17.** This the side of tower 1 facing tower-17 cannot be treated as dead end side of tower-1.”

(emphasis supplied)

98 The appellant filed its objections to the report of NBCC, contending the following:

- (i) The scope of enquiry was restricted by this Court to the issue whether T-1 and T-17 have dead end sides facing each other for the purpose of Regulation 24.2.1(6) of the NBR 2010. However, NBCC has widened the scope of enquiry and determined if the sanction is in compliance with the distance rule in NBC 2005;
- (ii) The entry to the ground floor of T-17 is provided on both sides. For the commercial shops, the entry is on the side perpendicular to the side facing T-1, and for the other facilities it is on the other side opening towards the side of T-16 and the open space;
- (iii) The passage between T-1 and T-17 is used only to enter into the parking space allotted for the houses in T-1 to T-15. To enter the parking space of T-17, another passage is used;
- (iv) Four out of the five external sides of the apartments in T-1 facing T-17 are dead ends (two plumbing shafts, toilet dead wall, bedroom dead wall). Only the fifth external side of T-1, which is a balcony attached to the living room, faces towards T-17;
- (v) Though the entry in T-1 is facing T-17, the entry is 20 mtrs. away from T-17;
- (vi) NBCC has failed to consider the different line positions with respect to T-1 and T-17. There are sixteen line positions of the sides of T-1 and T-17 that

are facing each other and they are predominantly dead end sides. Of the sixteen line positions:

- a. Eleven line positions have dead walls facing each other;
- b. Two line positions have dead walls of T1 facing windows of T-17. However, there is a 16 mtrs. open space between them;
- c. Two line positions have the railings of common lift lobbies of T-1 facing the bed room window of T-17. However, there is a 3 mtrs. open space between them; and
- d. One line position where the dead wall of shaft of T-1 faces the railing of balcony in T-17, there is 9.30 mtrs. of open space between them. The open space between the walls of both the buildings in this line space is 10.80 mtrs.

99 The first respondent also sought an expert opinion on whether T-1 and T-17 have dead end sides facing each other from IIT Delhi. The report was submitted on 6 September 2016 to this Court, and concluded that the sides of T-1 and T-17 that face each other cannot be considered as 'dead end sides of the building'. It was observed that when balconies and windows (or any other egress) are provided, the functional performance will be compromised if the minimum distance as prescribed is not adhered to. Elaborating further, it was stated that the minimum distance can be reduced when there is no egress on the concerned side of the building because then there would be no possibility of a functional compromise. The reasoning in the report is summarized below:

- (i) The dictionary meaning of 'dead end' is "no exit", *i.e.*, no egress or without openings. Therefore, the presence of any opening in the form of windows of balconies renders the building side not a dead end;
- (ii) The purpose of prescribing a minimum distance requirement between two buildings is to prevent transmission of fire for safe escape during calamities, minimum ventilation, and to receive natural day light. In case the minimum distance requirement between buildings with egress facing another building is not complied with, then the function of the egress (through window or balcony) will be compromised due to the following reasons:
 - a. To avoid transmission of fire: According to NBC 2005, fire separation is defined as the distance from the 'external wall' of a building to the 'external wall' of another building. There is an increased possibility for fire to be transmitted to the adjacent building through windows. However, if the walls have no openings, then the distance between the buildings can be less since there is a lesser chance for transmission of fire;
 - b. Safe escape and rescue: As the height of the building increases, there is an increased difficulty to rescue residents in case of emergency situations. In such cases, open balconies can be used to facilitate rescue operations provided that the street has sufficient width. As the height of the building increases, for maximum safe inclination of the ladder, the street has to be wider;

- c. Minimum ventilation: Minimum natural ventilation is required for hygienic ventilation (*i.e.*, the removal of CO₂, body odour, etc.), for heat exchange and cooling of the building; and
 - d. Natural day light: When the distance between two buildings is high, the building receives direct sunlight;
- (iii) The main entry/exit of T-1 is facing T-17. This entry is the only one that abuts the road and will in all probability be used for rescue operations if the need arises. The balconies of habitable rooms in T-1 and T-17 also face each other. Therefore, the concerned building sides (of T-1 facing T-17 and vice versa) cannot be considered as dead ends since the sides have egress. Moreover, a reduction in the minimum distance requirement would severely compromise the purpose of providing such egress.

100 The first respondent by a letter dated 6 October 2016 also sought an expert opinion from IIT Roorkee on whether T-1 and T-17 have dead end sides facing each other. A report was submitted in October 2016 to this Court holding that the building sides of T-1 and T-17 facing each other cannot be termed as 'dead ends' for the following reasons:

- (i) The scientific basis of providing the distance requirement is to enhance fire safety, provide sufficient day light and ventilation, visual privacy and air flow;
- (ii) The Merriam Webster Dictionary defines 'Dead End' as a street that ends instead of joining with another street so that there is only one way in and out of it. 'Dead wall' is defined as a wall without openings such as doors, windows

and ventilators. Therefore, evidently, openings for fenestration and the presence of balconies and windows would mean that the 'side' is not a dead end side;

- (iii) When the side of the building facing another building has egress, the minimum distance specified under the Regulations must be complied with. Otherwise, the functional performances of the egress (*i.e.*, balcony, window, etc.) will be compromised; and
- (iv) The main entry, the doors, windows, and balconies of T-1 face T-17. Since the side of T-1 facing T-17 has egress, it is not a 'dead end side'.

101 The appellant approached Design Forum International²⁴, an architectural and design firm, requesting their assistance in the ongoing case. DFI through its report made the following observations on NBCC's report regarding the dead end issue:

- (i) T-1 and T-17 vary in design. T-17 has nearly three times the length when compared to T-1. Moreover, the portion of T-17 that overlaps T-1 is not constant along the whole length. Therefore, it is necessary that the sides of the towers facing each other are examined in a more detailed manner;
- (ii) The entry of T-1 and T-17 is perpendicular to each other;
- (iii) The sides of T-1 and T-17 can be classified into the following three categories: (a) dead end facing dead end (*i.e.*, a wall facing a wall); (b) dead end facing a non-dead end (*i.e.*, a wall facing a window); and (c) non-dead end facing a non-dead end (*i.e.*, a window facing a window);

²⁴ "DFI"

- (iv) The position is clear under Regulation 24.2.1(6) of NBR 2010 that for cases falling under (a), the distance between the buildings must be 9 mtrs. and for cases falling under (c), the distance must be 16 mtrs. However, for cases that fall under (b), there is no clarity on the distance that must be maintained between the buildings;
- (v) There are thirteen unique line positions between T-1 and T-17. Of the thirteen line positions, in six line positions the dead end side of T-1 faces the dead end side of T-17 (Type (a)); in four line positions, the dead end side of T1/T-17 faces the non- dead end side of the other (Type (b)); in three line positions, the non-dead end side of T-1 and T-17 face each other (Type (c));
- (vi) For the line positions falling under type (a), the distance varies from 9.88 mtrs. to 15.11 mtrs. complying with the 9 mtrs. requirement; for the line positions falling under type (b), the distance varies from 10.8 mtrs. to 15.3 mtrs.; for the line positions falling under type (c), the distance varies between 14.62 mtrs. to 15.5 mtrs., which is 'very slightly lesser' than the required 16 mtrs.;
- (vii) Since the distance between the sides of T-1 and T-17 facing each other differ widely and is not uniform, this Court will have to undertake an in depth analysis of the issue keeping in mind the unique situation; and
- (viii) The minute deficiency in case of type (c) and type (b) (if this Court declares the distance to be deficient) can be rectified by making structural alterations in the buildings by shifting the position of the egresses.

102 The NBR 2010 does not provide any definition of the phrase 'the dead end side of the block.' NBR 2006, NBC 2005 and the UPIAD Act 1976 also do not define the phrase. The Court while interpreting the expression will have to attribute a contextual meaning to the phrase 'dead end side of the block'. The above reports adopt two different meanings of the phrase. The NBCC report and the appellant in its objections before the NBCC state that the dead end sides of the building would mean where 'habitable rooms' of a building do not face each other. Though it is not specified that only habitable rooms with 'windows/balconies' will not be considered as dead ends, it is evident that the argument is that it is only if a habitable room with egress faces the side of the adjacent building, that it should not be considered as a dead end side. The corollary is that if the store room or the bathroom or corridor with a window/vent faces the side of the adjacent building it must still be considered as a dead end. Whereas, the reports by IIT Delhi and IIT Roorkee take another approach by defining a dead end side of a building as a side with egress (*i.e.*, windows, balconies or vents) without any reference to 'habitable rooms'.

103 Two other contentions on the interpretation of the phrase have also been raised. It is contended that the phrase is ambiguous to the extent that it does not provide clarity on whether an egress of a building facing a dead wall of the adjacent building would fall within the exception. It is also contended that since the height of T-1 and T-17 is not the same, two egresses in adjacent buildings face each other only in a few line positions, and the requirement of minimum distance between the

adjacent buildings must differ with each line position depending upon whether those specific line positions are dead ends.

104 We are therefore faced with three questions while interpreting the phrase ‘dead end sides of the buildings’:

- (i) whether only habitable rooms with egress in any part of the building must be excluded from the ambit of the phrase ‘dead end sides of the buildings’;
- (ii) whether both sides of the buildings must be dead end sides, or whether it is sufficient if one side of the building is a dead end side; and
- (iii) whether the direct line position must be used for the determination of ‘dead end sides of the building’ and the distance between two adjacent buildings.

105 We are unable to accept the contention that only habitable rooms with egress (that is, windows or balconies) will fall outside the ambit of ‘dead end side of the buildings’. ‘Dead end’ in common parlance means no exit or absence of access. NBR 2010 does not provide any indication to classify between habitable and non-habitable rooms in the context of the phrase ‘dead end side’. The argument that the classification between habitable and non-habitable rooms has been made in the Model Bye-Laws with specific reference to the distance requirement and therefore, it must be imported for the interpretation of the phrase ‘dead end sides of the building’ is unsatisfactory. It is a settled principle of statutory interpretation that words must be given their plain and ordinary meaning unless such an interpretation leads to an ambiguity or absurdity or when the object of the statute indicates otherwise. The use

of the phrase 'dead end side of the building' in NBR 2010, in spite of the other bye laws using the phrase 'habitable rooms', makes it evident that the intent was to restrict the ambit of the exception. Interpreting the phrase in the context of the ordinary meaning of the word 'dead end' does not lead to any ambiguity; rather it is in pursuance of the intent and purpose behind the provision. As stated by the reports submitted by IIT Delhi and IIT Roorkee, the purpose of prescribing a higher minimum distance between adjacent buildings in case the side of the building facing another has egress is so that the functional utility of the egress (either a window or balcony) is not diminished. Windows/balconies, irrespective of whether they are attached to a habitable or a non-habitable room, perform functions which will be greatly diminished if the adjacent building is closer and thereby restricting the air flow and increasing the chance of transmissibility in the event of a fire. Moreover, the privacy of the flat dwellers would be severely compromised. The expansion of the meaning of the phrase 'dead end side of the building' to include non-habitable rooms with windows would thus amount to rewriting the regulation, when no such indication can be construed from NBR 2006 or NBR 2010.

106 The contention that the dead end exception will be applicable, even if one side of the two adjacent buildings has a dead end is erroneous. Regulation 24.2.1(6) of NBR 2010 states "*If the blocks have dead end sides facing each other, then the spacing shall be maximum 9 meters instead of 16 meters*". The words 'blocks' and 'sides' in the plural form find place in Regulation 24.2.1(6) of NBR 2010. The Regulation does not state 'if the block having a dead end side'. When the phrases or

words are free from ambiguity and when there is only one meaning that the phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat the intent, purpose and object of a provision in a planning regulation.

107 The report submitted by DFI refers to the variant heights of T-1 and T-17. The contention is that since the structure of T-1 and T-17 are different, and since the towers horizontally overlap with each other only to the extent of the height of the shorter tower (T-1), the distance between T-1 and T-17 must be measured in the direct line positions. These direct line positions are then classified into three categories (Category (a) - dead end facing dead end; Category (b) - dead end facing a non-dead end; Category (c) - a non-dead end facing a non-dead end). The distances between T-1 and T-17 with respect to each of these types have been measured to argue that for lines falling in category (a), it is enough if the distance is 9 mtrs; for those falling under category (b), there is no clarity on the distance required; and for lines in category (c), a minimum distance of 16 mtrs. is required. This argument rests on two premises: (i) the minimum distance requirement prescribed under Regulation 24.2.1(6) of NBR 2010 is not the distance between two buildings but is rather the distance between the different direct line positions between two adjacent buildings; and (ii) it is necessary for the entire adjacent blocks to have non-dead end sides facing each other for the 16 mtrs. distance rule to be applied uniformly.

108 The phrase which is used in Regulation 24.2.1(6) of NBR 2010 is 'block' and not 'flat'/'unit'. The unit of consideration is thus not individual 'units' in the block but the entire block itself. The side of the block would not be a dead end side if there are even few egresses. If the direct line position argument is accepted, then the intent behind providing the minimum distance requirement would become nugatory. The purpose of imposing the minimum distance requirement as stated in the reports of IIT Delhi and IIT Roorkee is to provide ventilation, direct sun light, means of rescue and prevent the spread of fire. If particular 'flats'/'units' in the block have a vent according to the construction plan, the minimum distance would have to be complied with, not just with respect to the direct line but with respect to the 'entire block'.

109 The reports of IIT Delhi and IIT Roorkee clearly elucidate the difficulty in evacuation of occupants in high rise buildings. The report states that the distance between adjacent buildings needs to be greater for taller buildings since the street has to be wider for the maximum safe inclination of the ladder. The reports also mention the reduction in ventilation, sunlight and privacy in case the distance between the buildings is less. Therefore, irrespective of whether all or some of the units in the block have an egress facing the adjacent building, the minimum distance of 16 mtrs. will have to be complied with, otherwise the purpose of providing the vent would be functionally compromised

110 In view of the above discussion, the principles that would guide the interpretation of the phrase 'dead end sides of the blocks' are as follows:

- (i) The phrase 'dead end side of the block' would mean that any building does not have an egress;
- (ii) An egress in a non-habitable room like the bathroom or the storeroom will be considered as a non-dead end side;
- (iii) For the 'dead end' exception to be applicable, it is necessary that the sides of both the buildings facing each other must not have any egress;
- (iv) It is not necessary that all the units in the building facing the other building must have an egress. Even if some of the units have an egress, that side of the block will not be considered as a 'dead end side'; and
- (v) The minimum distance required between two adjacent blocks must not be measured through direct line positions of the units but along the ground.

111 On application of the principles deduced above on the interpretation of the expression 'dead end side of the building', the sides of T-1 and T-17 facing each other are held not to be dead end sides for the following reasons:

- (i) The windows/corridors of T-17 on all floors except the ground floor have an opening on the side that faces T-1. Though this is contested by the appellant, it has been conceded that there are at least a few windows/balconies in T-1 facing T-17 and vice versa;
- (ii) The entries of T-1 and T-17 do not face each other but are perpendicular to each other. However, the entry to T-1 is from the side facing T-17;
- (iii) Four out of five external sides of T-1 that face T-17 are dead end sides. However, the fifth side is a balcony of the living room facing T-17. The

distance between points of the buildings cannot be selectively measured to argue its compliance with the distance rule; and

- (iv) Even though the entry of T-1 facing T-17 is 20 mtrs. away, the distance rule is not complied with since a selective measurement from the dead end points cannot be undertaken. The distance must be measured along the ground.

Thus, we find that the revised plans were in violation of NBR 2010 and do not fall under the exception provided in Regulation 24.2.1.6 for blocks having dead end sides.

D.2 Violation of NBC 2005

112 We shall now address the question of whether the third revised plans violated the NBC 2005. As we have seen above, NBC 2005 is referenced in Regulations 24.2.1.6 of the NBR 2010. NBC 2005 has two parts in regard to the maintenance of open spaces – para 8.2.3.1 and para 8.2.3.2. Para 8.2.3.1 provides for open spaces for buildings above the height of 10 mtrs., which are specified in Table 2. Table 2 indicates that the side and rear open spaces correspond to the height of the building and increase accordingly, beginning with 3 mtrs. for a building of a height of 10 mtrs. and up to 16 mtrs., where the height of the building is 55 mtrs. and above. In addition, Note 3 clarifies that where either the length and depth of the building exceeds 40 mtrs., the minimum distance which is prescribed must be further increased by ten percent of the length and depth of the building minus 4 mtrs. Thus,

the calculation for the side and rear open spaces to be left around the building would be as follows:

	(third revision)	(second revision)
Height of the Building	84.5 m ²⁵	73 m
Minimum distance prescribed in Col 3 of Table 22 (for buildings above 55 mtrs)	16 m	16 m
Distance to be maintained as per Note 3:		
	$16 + 10\% (84.5) - 4 =$	$16 + 10\% (73) - 4 = 19.3$
Distance in col (3) + 10% of the length or depth of building – 4.0 mtrs	20.45 mtrs	mtrs

Thus, according to the NBC 2005, the spacing between T-1 and T-17 should be 20.45 mtrs. Evidently then, the second and third revised plans were not in accordance with the NBC 2005. This conclusion is fortified by the report of the NBCC, which in para 5 reaches the conclusion that the minimum open space around T-17 is to be 20.45 mtrs. and thus, the distance between T-1 and T-17 does not comply with para 8.2.3.1 of the NBC 2005.

113 An alternative to para 8.2.3.1 has been provided in para 8.2.3.2 for 'tower like structures'. Para 8.2.3.2 stipulates that for a structure of a height up to 24 mtrs. with one set-back, the open spaces at the ground level should not be less than 6 mtrs.; if

²⁵ The total actual length of T-17 as noted in the NBCC Report is 84.5 m as against the envisaged 121 m.

the height is between 24 mtrs. and 37.5 mtrs. with one set-back, the open space at the ground level must be not less than 9 mtrs.; and for heights above 37.5 mtrs. with two set-backs, the open space at the ground level should not be less than 12 mtrs. Additionally, under (d) of para 8.2.3.1, the deficiency in open spaces of tower like structures (as compared to all building of height above 10 mtrs. in para 8.2.3.1) can be made good by providing set-backs at the upper levels, so long as the set-backs are not accessible from individual rooms or flats at these levels.

114 A reading of para 8.2.3.2 indicates that this exception is only applicable if the deficiency in open spaces can be made good by set-backs at the upper level. Clause (d) of para 8.2.3.2 of the NBC 2005 is *ex facie* not attracted for the reason that there are no set-backs at the upper levels within the contemplation of the disputed constructions. In any case, even para 8.2.3.2 provides that for tower like structures higher than 37.5 mtrs. with two setbacks, the open space should be not less than 12 mtrs. Thus, the exception is of no aid to the appellant and NOIDA which has issued the third revised plan envisaging a distance of 9 mtrs. between T-1 and T-17.

D.3 Violation of Fire Safety Norms

115 The appellant requested for a fire NOC for the construction of T-16 and T-17. On 11 September 2009, a report was submitted to the CFO observing that the road is wide enough for vehicles of the Fire Brigade Department to reach the spot in case of emergency situations. However, clause 10 of the report states that Part III and

Part IV of NBC 2005 will have to be complied with during the construction of the building and in case of non-compliance, the NOC shall stand cancelled. Para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. for the side and rear open spaces of buildings which are 55 mtrs. high and above.

116 On 18 August 2011, the CFO issued a temporary fire NOC for the construction of T-16 and T-17. This letter also stated that the applicant will have make arrangements for fire safety compliant with the NBC 2005. On 29 March 2012, the CFO issued a notice to the appellant highlighting various shortcomings in fire security provisions. On 24 April 2012, the CFO wrote to NOIDA stating that the distance between T-1 and T-17 is only 9 mtrs. which is violative of NBR 2006, NBR 2010 and NBC 2005 and asking if NOIDA had provided any exemption to the distance rule to appellant. The CFO issued a show cause notice to the appellant on 17 July 2012 directing that T-16 and T-17 that are under construction be physically separated from the 'old towers'.

117 A complaint was made by the first respondent to the CFO on the non-compliance of the conditions stipulated for the grant of the NOC for the complex (for T1 to T-15). A committee was constituted to look into the complaint and the following observations were made by the committee:

- (i) A show cause notice was issued for the construction of a second staircase. The stair case has still not been built;

- (ii) People are living in quarters constructed in the basement which is not in accordance with the NBC 2005 provisions;
- (iii) Set back is used as a parking, so the effective set back in certain places is reduced by 2 mtrs. and is thus less than the required 9 mtrs.;
- (iv) On the rear side of the tower, 6 mtrs. set back is not available.

118 These suggestions given by the committee were required to be complied with within six months. Since they were not complied with, a show cause notice was issued on 30 May 2014 for not remedying the deficiencies.

119 Regulation 76 of NBR 2006 states that the building must be planned and constructed in accordance with Part IV of National Building Code 1970, amended as of that day. Para 4.6 of NBC 2005 states that the approach to the building and the open spaces on all the sides of a high rise building shall be 6 mtrs. and that the layout of the building must be made in consultation with the CFO. However, para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. side and rear spaces for buildings that are higher than 55 mtrs. Therefore, on reading NBC 2005 as a whole, the side and rear space around the building must be 16 mtrs. The distance between T-1 and T-17 is only 9 mtrs., which is less than the required 16 mtrs.

120 The temporary NOC that was given by the CFO clearly states that the NBC 2005 must be complied with. However, as shown above, the provisions of NBC 2005 have not been complied with. Therefore, given that the rear distance requirement under NBC 2005 has not been complied with, the NOC given by the CFO stands

automatically cancelled in terms of the report dated 11 September 2009 and letter dated 18 August 2011.

E Consent of the RWA

121 Having held above that the sanction for the construction of T-16 and T-17 were given by NOIDA in contravention of the minimum distance requirement provided by the Building Regulations, we will advert to the next issue. It has been contended by RWA that the sanction could not have been revised without the consent of the flat purchasers in the original fifteen towers. While analyzing this issue, it is first important to consider the appellant's preliminary objection that the UP 1975 Act is not applicable to the present case. After addressing the preliminary objection, we shall analyze whether the consent was actually required under the UP 1975 Act and UP Apartments Act 2010.

E.1 Applicability of UP 1975 Act

122 The UP 1975 Act has been described in its long title as "an Act to provide for matters connected with the ownership and use of individual flats in buildings consisting of four or more flats". Section 2 of the Act states that the Act shall apply only to owners who submit to the provisions of the Act by executing a declaration. Section 2 reads as follows:

"2. Application of the Act. — This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in section 10:

Provided that no property shall be submitted to the provisions of this Act, unless it is actually used or is proposed to be used for residential purposes:

Provided further that the sole owner or all the owners of the land on which building is situated may submit such land to the provisions of this Act with a condition that he or they shall grant a lease of such land to the owners of the flats, the terms and conditions of the lease being disclosed in the declaration either by annexing a copy of the instrument of lease to be executed to the declaration or otherwise.”

123 Section 3(d)²⁶ contains the definition of common area and facilities. Section 4²⁷ stipulates that a flat shall be transferable and heritable property. Each owner of a flat is entitled to exclusive ownership and possession of their flat in accordance with the declaration. Moreover, a flat together with its undivided interest in the common areas and facilities shall be heritable and transferable immoveable property. Further, a flat together with its undivided interest in the common areas and facilities shall not be partitioned or sub-divided for any purpose.

²⁶“ (d) “common areas and facilities” includes—

- (1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;
- (2) the foundations, columns, girders, beams, supports, main wall, roofs, halls, corridors, lobbies, stairs, stair-way, fire-escapes and entrances and exits of the building;
- (3) the basements, cellars, yards, gardens, parking areas and storage spaces;
- (4) the premises for the lodging of janitors or persons employed for the management of the property;
- (5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and sewerage;
- (6) the elevators, tanks, pumps, motors, expressors, pipes and ducts and in general all apparatus and installations existing for common use;
- (7) such other common facilities as may be specially provided for in the Declaration;
- (8) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;”

²⁷ “4. **Flat to be transferable and heritable property.**—(1) Each owner of a flat shall be entitled to the exclusive ownership and possession of his flat in accordance with the Declaration.

(2) Subject to the provisions of the second proviso to section 2, a flat, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that no flat and the percentage of undivided interest in the common areas and facilities appurtenant to such flat shall be partitioned or sub-divided for any purpose whatsoever.”

124 Section 5 provides for common areas and facilities in the following terms:

“5. Common areas and facilities. — (1) Each owner of a flat shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.

(2) **The percentage of the undivided interest of each owner of a flat in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the owners of the flats** expressed in an amended Declaration duly executed and registered as required by this Act.

(3) The percentage of the undivided interest in the common areas and facilities shall not be separated from the flat to which it appertains, and shall be deemed to be conveyed or encumbered with the flat even though such interest is not expressly mentioned in the conveyance or other instrument.

(4) The common areas and facilities shall remain undivided, and no suit shall lie at the instance of any owner of the flat or other person for partition or division of any part thereof, unless the property have been withdrawn from the provisions of this Act.

(5) Each owner of a flat may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the owners of other flats.

(6) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws.

(7) The Association of Owners of flats shall have irrevocable right to be exercised by the Manager or the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary to have access to each flat from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency

repairs therein to prevent any damage to the common areas and facilities or to other flats.”

(emphasis supplied)

Under sub-Section (2) of Section 5, the percentage of the undivided interest of each owner of a flat in the common areas and facilities, as expressed in the Declaration, shall not be altered without the consent of all the owners of the flats expressed through an amended Declaration which shall be executed and registered under the Act. Section 10²⁸ provides for the contents of such a Declaration. Further, Section 11²⁹ envisages that all the owners of flats may withdraw a property from the provisions of the Act by an instrument executed to that effect, following which it shall be deemed to be owned in common by the owners of flats wherein the share of each

²⁸ “10. Contents of Declaration.—(1) The declaration referred to in section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely:—

- (a) description of the property, namely the description of the land on which the building is or is to be located, whether the land is freehold or leasehold and whether any lease of the land is to be granted in accordance with the second proviso to section 2, and description of the building or proposed building stating the number of storeys and basements and the number of flats;
- (b) nature of interest of the owner or owners in the property;
- (c) existing encumbrance, if any, affecting the property;
- (d) description of each flat containing its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;
- (e) description of the common areas and facilities;
- (f) description of the limited common areas and facilities, if any, stating to which flats their use is reserved;
- (g) value of the property and of each flat, and the percentage of undivided interest in the common areas and facilities appertaining to each flat and its owner for all purposes, including voting.”

²⁹ “11. Withdrawal from the provisions of the Act.— (1) All the owners of flats may withdraw a property from the provisions of this Act by an instrument executed to that effect.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the owners of flats and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance affecting any of the flats shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the owner of the flat in the property as provided therein.

(4) The withdrawal provided for in sub-section (1) shall in no way bar the subsequent resubmission of the property to the provisions of this Act.”

such owner shall be the percentage of undivided interest previously owned in the common areas and facilities.

125 The submission urged on behalf of the appellant is that the UP 1975 Act has no application to the present case, in view of the provisions of Section 2. Section 2, as we have seen, specifies that the Act applies only to a property, the sole owner or all the owners of which, submit it to the provisions of the Act by duly executing and registering a Declaration setting out the particulars as contained in Section 10.

126 Undoubtedly, in this case there was no declaration in terms of Section 2. However, significantly, the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, contains a stipulation in clause II(h) in the following terms:

“II) AND THE LESSEE DOTH HEREBY DECLARE AND COVENANTS WITH THE LESSOR IN THE MANNER FOLLOWING:

[...]

h) The Lessee/sub-lessee shall make such arrangement as are necessary for maintenance of the building and common services and if the building is not maintained properly the Chief Executive Officer, Noida or any officer authorized by him will have the power to get the maintenance done through the Authority and recover the amount so spent from the Lessee/Sub-Lessee. The Lessee/Sub-Lessee will be individually and severally liable for payment of the maintenance amount. **The rule/regulation of U.P. Flat Ownership Act, 1975 shall be applicable on the lessee/sub-lessee.”**
(emphasis supplied)

127 Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, advanced a submission that the last sentence of clause II(h) must be read together with the entirety of the clause, which relates to the maintenance of the building and common services. Clause II(h) states that in the event the building or common services are not maintained properly, NOIDA would be entitled to ensure the maintenance and recover the amount from the lessee/sub-lessee.

128 However, the application of clause II(h) cannot be brushed away on this basis, particularly since the sentence imposing the application of the UP 1975 Act on the lessee/sub-lessee must bear some meaning and content. In this context, during the course of his submissions, Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of the RWA, has placed on the record a copy of the registered sub-lease executed on a tripartite basis by NOIDA, with the appellant as the lessee and the flat buyer as the sub-lessee. Some important provisions of this deed of sub-lease are:

- (i) Clause 16 contemplates that the occupant of the ground floor would be entitled to use a “sit-out area but the right of user shall be subject to the provisions of the UP Ownership Flat Act 1975”;
- (ii) Clause 17 recognizes the right to user of the occupant of the dwelling unit on the top floor, subject to the provisions of the same enactment; and
- (iii) Clause 27 envisages that all clauses of the lease executed by NOIDA in favour of the appellant on 16 March 2005 shall be applicable to the sub-lease deed as well.

129 In the backdrop of this provision, more particularly, clause II(h) of the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, the appellant was duty bound to comply with the provisions of the UP 1975 Act. By submitting before this Court that it is not bound by the terms of its agreement or the Act for want of a declaration under Section 2, the appellant is evidently attempting to take advantage of its own wrong.

E.2 Applicability of the UP Apartments Act 2010

130 In 2010, the State legislature enacted the UP Apartments Act 2010. The long title describes the legislation as:

“An Act to provide for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto”

131 Section 2 of the Act is in the following terms:

“2. Application.- The provisions of this Act shall apply to all buildings having four or more apartments in any building constructed or converted into apartment and land attached to the apartment, where freehold, or held on lease excluding shopping malls and multiplexes.”

Thus, in contrast with Section 2 of the UP 1975 Act, the corresponding provision of the UP Apartments Act 2010 stipulates that the Act shall apply to all buildings with four or more apartments in any building and land attached to the apartment whether

freehold or held on lease. Further, unlike Section 2 of the UP 1975 under which the Act was to apply only when a declaration in terms of Section 10 was submitted, this Act does not require a declaration for it to apply.

132 The expression ‘apartment owner’ is defined by Section 3(d) of the Act as follows:

“(d) “apartment owner” means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments to and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more;”

133 The Act contains a definition of common areas in Section 3(i) and of limited common arears in Section 3(s):

“(i) “common area and facilities” means—

- (i) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;
- (ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;
- (iii) the basements, cellars, yards, parks, gardens, community centers and parking areas of common use;
- (iv) the premises for the lodging of janitors or persons employed for the management of the property;
- (v) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage;

(vi) the elevators, tanks, pumps, motors, fans, cable pipe line (TV, gas, electricity etc.) rain water harvesting system, compressors, ducts and in general all apparatus and installations existing for common use;

(vii) such other community and commercial facilities as may be specified in the bye-laws; and

(viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

[...]

(s) “limited common areas and facilities” means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments;”

134 The general liabilities which have been cast upon promoters intending to sell an apartment are set out in Section 4(1), which reads as follows:

“4. General liabilities of promoter.— (1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the Competent Authority:

(a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;

(b) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;

(c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;

(d) detail of all common areas and facilities as per the approved lay-out plan or building plan;

(dd) built-up area and common area of an apartment.

(e) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;

(f) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system etc. to be made available with the Association;

(g) all outgoings, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;

(h) such other information and documents as may be prescribed.”

Sub-Section (4) of Section 4 contains the following stipulations:

“(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authorities. The promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reason's duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the owner:

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as an not permissible in the building bye-laws.”

Under clause (c) of sub-Section (1) of Section 4, a promoter who intends to sell an apartment is required to make a full disclosure in writing to an intending purchaser and to the competent authority of the plans and specifications approved or submitted for approval to the local authority, of the building of which the apartment is a part. Similarly, under clause (d), a disclosure has to be made in regard to the common areas and facilities in accordance with the approved lay-out plan or building plan. Once such a disclosure has been made, sub-Section (4) stipulates that upon the execution of a written agreement to sell, the promoter may make minor additions or alterations as may be required or necessary due to architectural and structural reasons duly authorized and verified by authorized Architects or Engineers. Apart from these minor additions or alterations which are contemplated by sub-Section (4), the proviso stipulates that the promoter shall not make any alterations in the plans, specifications and other particulars “without the previous consent of the intending purchaser”. Mr Vikas Singh’s submission, that this provision will apply to intending purchasers of Apex and Ceyane and not to the persons who had purchased apartments in the existing fifteen towers, cannot be accepted. The above proviso is evidently intended to protect persons to whom the plans and specifications were disclosed when they were the “intending purchasers”. Further, a construction to the contrary will run against the grain of the intent and purpose of the statute as well its express provisions.

135 Section 5 of the Act provides for the rights of apartment owners in the following terms, insofar as is relevant:

“5. Rights of Apartment Owners.— (1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.

(2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.

(3)(a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.

(b) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.”

136 It is important to clarify at this stage that the UP Apartments Act 2010 will not apply with retrospective effect to the second revised plan, which was sanctioned on 26 November 2009. However, the legislation, which came into force upon publication in the UP Gazette on 19 March 2010, will have consequences for the third revised plan sanctioned on 2 March 2012, as analysed below.

E.3 Requirement of RWA’s Consent

137 In terms of the third revised plan which was sanctioned on 2 March 2012, the height of T-16 and T-17 was sought to be increased from twenty-four to forty (or thirty-nine, as the case may be) floors. As a result, the total number of flat

purchasers would increase from 650 to 1500. The clear implication of this would be a reduction of the undivided interest of the existing purchasers in the common areas. As a matter of fact, it has also been submitted on behalf of the first respondent that the additional lease rent paid to NOIDA was also sought to be collected from the existing flat purchasers at the rate of Rs 190 per sq. foot. A statement to that effect was also contained in an affidavit filed before the High Court on behalf of the first respondent. The purchase of additional FAR by the appellant cannot be used to trample over the rights of the existing purchasers.

138 Flats were sold on the representation that there would be a garden area adjacent to T-1. The garden adjacent to T-1 is clearly depicted in the first revised plan of 29 December 2006. It is this garden area which was encroached upon when the second revised plan was sanctioned on 26 November 2009.

139 However, according to the appellant, T-16 and T-17 form part of Phase II of Emerald Court, which had not encroached on any part of the common areas of Phase I, under which all the other towers fell. In this context, it would be material to note a letter dated 13 February 2012 addressed to the Circle Officer, City 3rd NOIDA, Gautam Buddh Nagar, by the Director of the appellant, in which it has been stated that:

“Kindly, refer to your Letter Dt. 10.02,2012, received by us on 11.02.2012, regarding which written statement on behalf of M/s. Supertech Limited is presented as under:

1. That, [A]pex and [Ceyane] multi storey residential tower is being constructed over plot measuring nearly 6500 sq. meter which was acquired by the Company M/s. Supertech Limited

from NOIDA Development Authority in the year 2006, regarding which its supplementary lease deed was registered in the office of Sub-Registrar, Second, Gautam Buddh Nagar...

2. That, right from the beginning there was a plan for constructing separate complex viz. Apex and [Ceyane] and provisions have been separately made in both towers viz. swimming pool, car, club, parking and gym etc. The facilities of other old towers as shown in the brochure have been published by mistake, but concerned amendment was made in the brochure upon the company being informed by the residents residing in old towers...

[...]

4. That, company has erected wall for the expansion of basement and above wall was erected by the company over its land and this basement area was not sold to any resident of old tower over which company has complete ownership. No adverse effect is there on the interests of any resident in erecting above wall, rather the residents of old tower have been removed from the allotted basement area by it. Company has full right to make construction over its land.

5. That, construction carried out earlier or being carried out by the company is completely legal and in accordance with Rules and company has not affected the interest of anybody and no fraud was committed by the company with anybody.

Therefore, it appears that the complainant having presented this false complaint inspired by mala fides wants to harass the company and wants to earn undue advantage by not making payment of an amount which is payable to the company. Therefore, it is requested that complaint presented by the complainant is liable to be dismissed. In addition, it is also requested that any personal name be not used in any correspondence or inquiry, rather name of company through its Director be used."

(emphasis supplied)

The above letter puts forth the case that T-16 and T-17 have been constructed as a separate project over the area which was obtained under the supplementary lease deed, and that it has separate provisions for all amenities and infrastructure. In fact, it indicates that the facilities of the older buyers were shown in the brochure but that representation was 'clarified' to be a 'mistake', which had been amended.

140 As such, it becomes important to refer to the supplementary lease deed, which was granted in favour of the appellant on 21 June 2006. The supplementary lease deed makes it clear that the demised premises admeasuring 6556.51 sq. mtrs. would form a part of the originally allotted plot. In the course of its affidavit before the High Court, the appellant contended that:

"7. The Office bearers/members of the petitioners society has the right title & interest only in its flat and undivided interest in the common areas of the Emerald Court (phase I). He has the right to challenge if somebody is trying to encroach in his flat or in the Common area are intended to be used for the purpose of the residents. However, here this is not the case. It is stated that the "Apex & Ceyane" (Phase II) comprising of two towers has not encroached any area of the common of the Emerald Court (Phase I). Therefore the petitioner society does not have the locus to challenge the issues related with "Apex & Ceyane" (Phase- II)."

In other words, the case which was sought to be set up was that the flat purchasers had an undivided interest in the common areas of Phase I of the Emerald Court, but since T-16 and T-17 formed a part of Phase II, it did not affect the rights of the original flat purchasers of T-1 to T-15. This contention is expressly contrary to the clear terms governing the supplementary lease deed, which indicates that the area

comprising of the demised premises would form part of the original plot. Furthermore, the appellant having utilized the FAR of the entire plot, including the area which forms the subject matter of the original lease and the supplementary lease, cannot be allowed to assert to the contrary.

141 Hence, it is abundantly clear that the construction of T-16 and T-17 in accordance with the second revised plan and the third revised plan reduced the value of the undivided interest held by each individual flat owner in the common areas and facilities, thereby violating Section 5 of the UP 1975 Act and Section 5 of the UP Apartments Act 2010, since the flat owners' consent was not sought. Further, the third revised plan encroached upon the garden area in front of T-1, thereby resiling from the representation that had been made to the flat owners at the time when they purchased the apartments in T-1, without their consent. Therefore, it constituted a violation of Section 4(1) read with the proviso to Section 4(4) of the UP Apartments Act 2010.

142 Finally, the appellant has also tried to argue that: (i) the consent of each individual flat owner could not be taken and it had to be taken from the RWA, as a collective body; (ii) the RWA only came into existence on 20 October 2013, when it adopted the Model Bye-Laws under the UP Apartments Act 2010; (iii) that this was after the third revised plan was sanctioned; and (iv) hence, there existed no association to take consent from. The High Court has dealt with this argument in the impugned judgment by observing:

“As per the averments of the respondent/company, the flats were handed over to the apartment owners by September 2009. The owners immediately formed Resident Welfare Association (RWA) and got it registered with the Registrar Societies, in the very same year. Adopting the model bye-laws, did not arise, as it was not enforced until 2011. After notification of Model bye-laws, the Deputy Registrar Firm, Societies and Chits, Meerut vide letter dated 14.12.2012 informed, that pending instructions from the Registrar Firm Societies and Chits Uttar Pradesh, no decision in the matter can be taken in respect of Model bye-laws and its registration. The Registrar Firm, Societies and Chits Uttar Pradesh vide circular dated 5.2.2013 addressed to all Deputy Registrars/District Registrars issued instructions for registration under Apartment Act, 2010 and directed that bye laws of existing RAW be accordingly amended. The petitioner/society vide resolution dated 20.10.2013 adopted the Model bye-laws and conducted elections and thereafter informed the Deputy Registrar.

The respondent/company has recognized the petitioners society as RWA of the Apartment owners since inception and has continuously corresponded with the petitioner society as RWA. Letter dated 9.10.2012, 27.9.2012, 4.9.2012 and January, 2013 addressed to the petitioner society regarding redressal of their grievance is on record...”

Therefore, it is clear that: (i) the RWA came into existence in 2009 itself, when the first lot of apartment owners moved in; (ii) the appellant was communicating with the RWA ever since; and (iii) the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010, as soon as it was practicable. These averments have not been challenged before this Court during the oral submissions by the appellant, and hence, it will be held bound by its own conduct. In any case, rights under the UP 1975 Act and UP Apartments Act 2010 have been provided to individual flat owners, and not to collective bodies like the RWA. Hence, even the non-constitution of the RWA will not extinguish the rights of individual flat owners. Indeed, however, when

such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually.

F Collusion and Illegal Construction

143 The record of this case is replete with instances which highlight the collusion between the officers of NOIDA with the appellant and its management. The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law. The complicity of NOIDA has emerged, *inter alia*, from the following instances:

- (i) The sanctioning of the second revised plan on 26 November 2009 in clear breach of the NBR 2006;
- (ii) The refusal by NOIDA to disclose the building plans to the first respondent, in spite of a clear stipulation consistently in all the sanctioned plans that the plan would have to be displayed at the construction site of the appellant;
- (iii) NOIDA's referral of RWA's request to access the sanctioned plans to the appellant to seek its consent and upon the refusal of the latter, a continuous failure to disclose them to the RWA;
- (iv) Even when the CFO addressed a communication to NOIDA in regard to the violation of the minimum distance requirements in Emerald Court, it evinced no response and no investigation from them;
- (v) In pursuance of the second revised plan of 26 September 2009, the appellant would appear to have built a foundation to support two buildings of forty and

thirty-nine floors, while the sanction for the extension from twenty-four to forty or thirty-nine floors came about only on 2 March 2012 through the third revised plan; and

- (vi) The construction for T-16 and T-17 commenced in July 2009 by the appellant, five months before the sanction was received for the second revised plan on 26 November 2009, in spite of which NOIDA chose to take no action.

144 The High Court has dealt with the collusion between the officials of NOIDA and the appellant. This is writ large from the facts as they have emerged before this Court as well. The High Court has in these circumstances correctly come to the conclusion that there was collusion between the developer and the planning authority.

145 Condition 15 of the third revised plan dated 2 March 2012 stipulated that:

“15. Compliance of provisions of Uttar Pradesh Apartment (promotion of construction, ownership & maintenance) Act 2010, and directions issued thereunder shall be ascertained.

Sanctioned site plan/map is enclosed with this letter. Application for utility certificate would be made after completion of building work within validity of map/site plan, and without permission and certification building shall not be used...”

In spite of this condition, NOIDA made no effort to ensure compliance of the UP Apartments Act 2010, as a result of which the rights of the flat purchasers have been brazenly violated. This cannot point to any conclusion, other than the collusion between NOIDA and the appellant to avoid complying with the provisions of the

applicable statutes and regulations for monetary gain, at the cost of the rights of the flat purchasers.

146 The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

147 From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.

Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

148 The judgments of this Court spanning the last four decades emphasize the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.

149 In **K. Ramadas Shenoy v. Chief Officer, Town Municipal Council**³⁰, Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it “acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising

³⁰ (1974) 2 SCC 506

its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held:

"27...The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See *Yabbicom v. King* [(1899) 1 QB 444])."

This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorized construction.

150 These principles were re-affirmed by a two judge Bench in **Dr G.N. Khajuria v. Delhi Development Authority**³¹ where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. Justice BL Hansaria, speaking for the Court, observed:

"10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully

³¹ (1995) 5 SCC 762

inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite.”

151 In **Friends Colony Development Committee v. State of Orissa**³², this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorized. Chief Justice RC Lahoti, speaking for a two judge Bench, observed:

“24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk,

³² (2004) 8 SCC 733

inconvenience and hardship which is posed to the occupants of the building.”

Noting that the private interest of land owners stands subordinate to the public good while enforcing building and municipal regulations, the Court issued a caution against the tendency to compound violations of building regulations:

“25...The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

152 In **Priyanka Estates International (P) Ltd. v. State of Assam**³³, Justice Deepak Verma, speaking for a two judge Bench, observed:

“55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for

³³ (2010) 2 SCC 27

this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are “given a seal of approval by Court”, it was bound to affect the public at large. It also noted that the jurisdiction and power of Courts to indemnify citizens who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.

153 In **Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai**³⁴, Justice GS Singhvi, writing for a two judge Bench, reiterated the earlier decisions on this subject and observed:

“8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it.”

The Court further observed that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities

³⁴ (2013) 5 SCC 357

provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the fore-front when the Court prefaced its judgment with the following observations:

“1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.”

Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularize a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held:

“56...We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

154 These concerns have been reiterated in the more recent decisions of this Court in **Kerala State Coastal Zone Management Authority v. State of Kerala**³⁵, **Kerala State Coastal Zone Management Authority v. Maradu Municipality, Maradu**³⁶ and **Bikram Chatterji v. Union of India**³⁷.

155 In the present case, once this Court has determined that the sanctioned plan for Apex and Ceyane (T-16 and T-17) breached the NBR 2006, NBR 2010, NBC 2005, UP 1975 Act and the UP Apartments Act 2010, it becomes its duty to take stock of the violations committed by the appellant in collusion with NOIDA. The appellant has raised false pleas and attempted to mislead this Court, while the officials of NOIDA have not acted *bona fide* in the discharge of their duties. The appellant has stooped to the point of producing a fabricated sanctioned plan. Therefore, we confirm the directions of the High Court including the order of demolition and for sanctioning prosecution under Section 49 of the UPUD Act, as incorporated by Section 12 of the UPIAD Act 1976, against the officials of the appellant and the officers of NOIDA for violations of the UPIAD Act 1976 and UP Apartments Act 2010.

³⁵ (2019) 7 SCC 248

³⁶ 2018 SCC OnLine SC 3352

³⁷ (2019) 19 SCC 161

G Conclusion

156 To summarize our findings, the documentary materials referred to and analyzed in this judgment indicate that:

- (i) The land allotted to appellant under the original lease agreement and the supplementary lease deed constitute one plot;
- (ii) The land which was allotted through the supplementary lease deed forms a part of original Plot No 4, and would be governed by the same terms and conditions as the original lease deed;
- (iii) The sanction given by NOIDA on 26 November 2009 and 2 March 2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005;
- (iv) An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T-1, T-16 and T-17 are part of one block is directly contrary to the appellant's stated position in its representations to the flat buyers as well as in the counter affidavit before the High Court. The suggestion that T-1, T-16 and T-17 are part of one block is an after-thought and contrary to the record;
- (v) After realizing that the building block argument would not pass muster, another false case was sought to be set up with the argument that T-1 and T-17 are dead end sides, thereby obviating the need to comply with the

minimum distance requirements. This argument is belied by the comprehensive report submitted by NBCC. The sides of T-1 and T-17 facing each other are not dead end sides since both the sides have vents/egresses facing the other building;

- (vi) By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated;
- (vii) The first revised plan of 29 December 2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26 November 2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T- 16 and T – 17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the UP Apartments Act 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners; and
- (viii) T-16 and T-17 are not part of a separate and distinct phase (Phase–II) with separate amenities and infrastructure. The supplementary lease deed stipulates that they are part of the original project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the UP Apartments Act 2010 and UP 1975 Act before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500; and

- (ix) The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of NOIDA and the appellant and its management.

157 For the reasons which we have indicated above, we have come to the conclusion that:

- (i) The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed;
- (ii) The work of demolition shall be carried out within a period of three months from the date of this judgment;
- (iii) The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of NOIDA. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing pleadings, NOIDA shall consult its own experts and experts from Central Building Research Institute Roorkee³⁸;
- (iv) The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by NOIDA;
- (v) The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant;

³⁸ "CBRI"

- (vi) The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T -17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment; and
- (vii) The appellant shall pay to the RWA costs quantified at Rs 2 crore, to be paid in one month from the receipt of this judgment.

H Interlocutory Applications

158 Mr Vikas Singh, learned Senior Counsel, has during the course of the hearing tendered an additional affidavit to indicate the following position:

- (i) The contention of RWA that the appellant has collected the onetime lease rent at the rate of Rs 190 per sq. foot from all the flat owners in T-1 to T-15 and that though an amount of Rs 16.75 crores was collected, only Rs 13.32 crores was payable to NOIDA is incorrect;
- (ii) The appellant did not collect the lease rent payable to NOIDA from all allottees of T-1 to T-15. An amount of Rs 7.54 crores was received from some allottees;
- (iii) The lease rent paid to NOIDA was in the amount of Rs 14.49 crores;
- (iv) A total of 659 units were booked in T-1 to T-14; and
- (v) Of these units 245 flats were booked till 28 December 2006; 141 flats were booked between 29 December 2006 and 25 November 2009, 114 flats were

booked between 26 November 2009 and 1 March 2012, while 159 units were booked after 2 March 2012.

On this basis, it has been submitted that 518 units were booked either before 28 December 2006 (before the first revised plan) or after 26 November 2009 (after the second revised plan). The figures which have been indicated by the appellant demonstrate that between the first revised plan on 29 December 2006 and the second revised plan on 25 November 2009, 141 flat purchasers had booked flats. They did so on the clear representation contained in the sanctioned plans.

159 During the pendency of these proceedings, two interim orders were passed by this Court on 6 September 2016 and 22 September 2017. By the order dated 6 September 2016, this Court directed the appellant to pay a return of ten per cent to those flat purchasers who continue to stay in the project. By the order dated 22 September 2017, an exit option was granted to those who sought refunds to take the amounts invested with interest at the rate of twelve per cent per annum.

160 The position as indicated to this Court by Mr Ravindra Kumar, learned Counsel, in respect of flats in Apex and Ceyane (T-16 and 17) is as follows:

- (i) Number of flats: 915;
- (ii) Number of shops: 21
- (iii) Number of bookings: 633;
- (iv) Persons who have reinvested in other projects of the developer: 133;
- (v) Purchasers to whom refund has been granted: 248; and

(vi) Remaining purchasers: 252.

161 The above position indicates that following the opt-out which was provided in terms of the order of this Court, 248 purchasers have opted for refunds while 252 purchasers in T-16 and T-17 remain committed to the project.

162 Mr Gaurav Agarwal, learned *Amicus Curiae* has rendered comprehensive assistance to the Court. Apart from urging his submissions in an objective and dispassionate manner, the *Amicus Curiae* has painstakingly complied the pleadings, documents and statutory provisions to facilitate the convenience of arguing Counsel and the Court. We record our appreciation for the assistance which has been rendered by the *Amicus Curiae*. The *Amicus Curiae* has also prepared a note for the purpose of segregating the applications which have been filed by home buyers into distinct categories, and suggesting reliefs to each category based on the outcome of the proceedings. These categories are:

Category I

163 Buyers who have received ROI payments:

- (i) By its orders dated 6 September 2016 and 11 January 2017, this Court directed that those home buyers who have chosen to stay on with the project and do not desire refund should be paid ROI at ten per cent per annum; and
- (ii) Thirteen persons filed applications before this Court claiming that ROI payments were not made by the appellant. The appellant has intimated the payments which are due till July 2021. Though, the home buyers claim higher

amounts, the *Amicus Curiae* has proceeded on the figures furnished by the appellant which are tabulated as follows:

Sr. No.	Name	IA no.	Interest due till 1 st July, 2021 as per email received from Supertech	Name of AOR
1	Aarti Puri	55556/2021	Rs. 16,78,720	Nishe Rajen Shonker
2	Divay Puri	80599/2021	Rs. 16,78,548	Do
3	Jatin Vardi	55562/2021	Rs. 11,65,686	Do
4	Amit Khanna	56228/2021	Rs. 11,65,686	Do
5	Narinder Thakur	55550/2021	Rs. 10,41,578	Do
6	Manju Kohli	142969/2014	Rs. 6,78,524	Do
7	Namrata Tuli	142975/2018	Rs. 8,26,616	do
8	Mahesh Jaura	80916/2019	Rs. 1,11,160	do
9	Kavita Jaura	80875/2019	Rs. 2,01,299	do
10	Hemendra Varshney	80879/2019	Rs. 1,33,980	do
11	Shachi Varshney	80881/2019	Rs. 1,31,988	do
12	Bandana Kedia	80918/2019	Rs. 1,31,700	do
13	Sapna Ahluwalia	43555/2021	Rs. 19,87,020	do

164 The submission of the *Amicus Curiae* is that if the buildings were to stand, the home buyers may be paid the above ROI. On the other hand, if the buildings are to be demolished, the home buyers should receive refund with interest and the amounts would be subsumed in the interest to be paid. Since this Court has come to the conclusion that the buildings are to be demolished, the general directions in regard to refund together with interest will subsume the claims of the above home buyers.

Category 2

165 Homebuyers to whom principal has been paid but interest payments have remained:

- (i) By an order dated 30 July 2018, this Court directed that homebuyers who had registered on the portal and were willing to take twelve per cent simple interest per annum from the date of deposit till the date of payment towards full and final payment would be refunded the principal sum together with interest at the above rate on filing affidavits to that effect; and
- (ii) The registry has refunded the principal sum to thirteen homebuyers but since their affidavits were not received by the *Amicus Curiae* within time, interest remained to be paid. The details have been tabulated by the *Amicus Curiae* as follows:

Sr. No.	Name	Interest payable	IA no.	Name of AOR
1	Anuj Goyal	Rs. 31,40,704	69916-69917 of 2019	Abhijeet Sinha
2	Sumit Goel	Rs. 28,97,199		
3	Priya Goel	Rs. 28,97,199		
4	Mukta Jain	Rs. 30,10,253		
5	Subhash Chand Jain	Rs. 29,05,957		
6	Abhishek Jain	Rs. 30,42,129		
7	Abhishek Jain	Rs. 30,22,785		
8	Herbinder Singh	Rs. 32,84,789		
9	Vineet Kapoor	Rs. 28,90,491		
10	Vishal Maheshwari	Rs. 22,45,399	24823/2020	Nishe Rajen Shonker
11	Shipli Maheshwari	Rs. 15,30,585	24834/2020	do
12	Poonam Lata Kushwaha	Rs. 29,22,513	120666/2019 & 120669/2019	Sweta Rani
13	Paramita Ray	Rs. 40,65,228		In-person

166 The *Amicus Curiae* has submitted that irrespective of the fate of the pleadings, the appellant should be directed to refund the interest as computed above since the above homebuyers have exited from the project. We accept the

submission and direct the appellant to refund interest payments to the thirteen homebuyers as tabulated above within two months.

Category 3

167 Home buyers under a 'subvention scheme':

- (i) Under the subvention scheme, a home loan is taken in the name of the homebuyer but EMIs are to be paid by appellant till possession is granted. Certain homebuyers are governed by the subvention scheme. There is a default by the appellant in paying the EMIs;
- (ii) By an order dated 30 July 2018, this Court directed the appellant to continue paying the EMIs. Sixteen homebuyers have moved this Court for a direction for payment of the balance EMIs due;
- (iii) The *Amicus Curiae* has tabulated the interest payable to the homebuyers (as computed by them and by the appellant separately):

Sr. No.	Name	Interest as indicated by homebuyer	Interest as indicated by Supertech	IA no.	Name of AOR
1	Parvinder Singh	Rs. 11,71,110	Rs. 8,81,847	24814,	Khaitan & Co.
2	Amit Mangla	Rs. 12,09,052	Rs. 12,09,052	24825,	
3	Binod Kumar	Rs. 11,73,902	Rs. 8,43,073	24839,	
4	Shailesh Kr Singh	Rs. 11,69,640	Rs. 8,51,310	24848,	
5	Dev Verma	Rs. 11,73,919	Rs. 8,58,311	24972,	
6	Naveen Kumar	Rs. 16,08,467	Rs. 11,07,792	24973,	
7	Vaibhav Mishra	Rs. 11,66,778	Rs. 8,37,666	24974,	
8	Mandar Hastekar	Rs. 11,66,826	Rs. 8,53,381	24978,	
				24984,	
				24985,	
				24989,	
				24992,	
				24996,	

9	Ashish Sharma	Rs. 11,73,092	Rs. 8,25,030	24997, 29374 & 29386/2020	
10	Hrisikesh-Kshitiza Bawa	Rs. 11,73,919	Rs. 8,39,984		
11	Babneet Singh	Rs. 11,74,308	Rs. 8,40,383		
12	Romit Agarwal	Rs. 11,66,182	Rs. 8,59,768		
13	Bhupinder-Puran Das Pruthi	Rs. 11,51,855	Rs. 9,43,782		
14	Nilay Ashmi	Rs. 11,67,529	Rs. 8,29,579		
15	Manoj Kr Pamneja (*)	Rs. 8,10,866	Nil	25950/18	Krishnamohan K
16	Sandeep Jain (*)	Rs. 8,10,866	nil	67854 & 67856/2020	Arjun Garg

The *Amicus Curiae* submits that the amounts calculated above be paid.

168 The *Amicus Curiae* submitted that if the buildings are ordered to be demolished, the appellant may close the home loans and refund the amounts contributed by the homebuyers with such interest as this Court may determine. On the other hand, if the buildings stand, the appellant may be directed to clear the outstanding EMIs and continue paying them until possession. Since the buildings have been ordered to be demolished under the directions of this Court in the present judgment, the appellant shall close the home loans and refund the amounts contributed by each of the above home buyers with interest at the rate of twelve per cent per annum within two months.

Category 4

169 There are two IAs in which the homebuyers have a dispute with the appellant relating to the amounts due to the homebuyers:

- (i) In IA No 56187/2021, Mr DP Tripathi was allotted Flat No 1105 in Apex. A total amount of Rs 31,70,410 was paid for the flat. Out of this amount, Rs. 14,25,000 was funded by loan. The appellant paid the loan pursuant to an order of this Court. However, the applicant has paid the balance amount of Rs 17,45,410 out of his own funds towards the flat, and Rs 6,58,700 as loan repayments before it was ultimately settled by the appellant. ROI payments for 27 months amounting to Rs 5,20,315 have been received from the appellant. Thus, the case of the applicant is that a sum of Rs 18,83,795 remains invested by the applicant, which may be ordered to be refunded. In contrast, the appellant has stated that this dispute has been settled by the Debt Recovery Tribunal and nothing is payable; and
- (ii) In IA No 67028/2017, Mr Raj Kishore had purchased Flat No 3507, in respect of which the amount has been refunded along with interest. A cheque of Rs 67,319 bearing no 213233 for the last payment remained to be encashed due to oversight. The *Amicus Curiae* has suggested that the appellant may be directed to issue a fresh cheque pertaining to this payment.

170 With regards to IA No 56187/2021, since the underlying dispute regarding payment is pending in this IA, it is de-linked and will be heard separately. In IA No

67028/2017, the appellant is directed to provide a fresh cheque for an amount of Rs 67,319 to the applicant within one month.

Category 5

171 Application of homebuyers which have been rendered infructuous. The *Amicus Curiae* has tabulated applications which have been rendered infructuous, indicating the reasons for the same:

Applications of home buyers which are rendered infructuous

Sr. No.	Name of homebuyers	IA no.	Name of AOR	Reasons
1	Leo VIII Films Pvt. Ltd.	18211/2018 18217/2018	Nitish Massey	Refund received with interest
2	Raj Kishore	67028/2017	Mahima Gupta	Refund received with interest
3	Sajeev Katarya	24785/2017	Rajeev Singh	Refund received with interest
4	Girish Arun Singpote	175122 & 175124 of 2018	UNUC Legal LLP	Applicants have not applied in portal
5	Darpan Bhargav	137549/2018	Gopal Jha	Applicant has not applied in portal
6	1)Arvind Kaur Sodhi 2) Amarjit Singh Rana & Jasjit Kaur	18064-18066/2020	Gopal Jha	Applicants have not applied in portal
7	Poonam Kulbir Krishnan	6919/2018	Aparna Bhat	This does not relate to this project, but it relates to the project in Gurgaon
8	Sanjay Bahl	24785/17	Rajeev Singh	Refund already paid @12%
9	Mini Kohli & Ors.	68049/17	PK Jain	Refund already paid with interest
10	Vibhav Bindal	96289/17	Pinky Behera	Refund already paid with interest
11	Sayed Asad Ahmad	11/15 in SLP	Shantanu	Applicant has not

		14314/14	Krishna	applied in portal
12	Vivek Sharma & others	12/2015 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
13	Usha Rani & others	14/16 in SLP 14314/14	Rajeev Singh	There are number of applicants in this application. Some of them got refund with interest. Others did not apply.
14	Vishal Raj Singh	IA 15/2016 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
15	Ishwar Kumar Singh	IA 16/2016	Amit Anand Tiwari	Refund already paid with interest
16	Sanjeev Katariya	IA 17/2016 in SLP 14314/14	Rajeev Singh	Refund already paid with interest
17	Ms. Raj Kishore & another	IA 18/2016 in SLP 14314/14	Mahima Gupta	One applicant has already paid refund with interest and other did not apply in portal
18	Mini Kohli & others	IA 21/17 in SLP 14314/14	PK Jain	Some applicants have already paid refund with interest and other did not apply in port.
19	Rashmi Arora	121826,121828/17	MC Dhingra	Refund already paid with interest
20	Jitendra Kumar Sabharwal & others	IA 121085/17	Rajeev Singh	Some applicants have already paid refund with interest and other did not apply in port.
21	Poonam Kulbir Krishan	14898/18	Aparna Bhat	This does not relate to present project.
22	Usha Rani & others	35845/21	Avjit Mani Tripathi	Most of the applicants have get refund of with 12%. Now they want 14% interest.
23	Manprit Kaur	IA 20/18 & 95793/16 in SLP	Anupam Lal Das	Refund already paid with interest

		14314/14		
24	Sajeev Aggrawal	IA 121841/17 & 121842/17	MC Dhingra	Refund already paid with interest

172 The above applications are disposed of as infructuous.

173 The appeals shall stand disposed of in the above terms. The contempt petitions are disposed of accordingly.

174 Pending application(s), if any, stand disposed of.

.....J
[Dr Dhananjaya Y Chandrachud]

.....J
[MR Shah]

New Delhi;
August 31, 2021



//TRUE COPY//

ANNEXURE-D

2013 SCC OnLine NGT 52

National Green Tribunal Principal Bench New Delhi
(BEFORE SWATANTER KUMAR, CHAIRPERSON AND U.D. SALVI, J.M., S.N. HUSSAIN, J.M. AND
P.S. RAO, E.M. AND RANJAN CHATTERJEE, E.M.)

In the matter of:

Kehar Singh S/o Shri Singh Ram, R/o Village Narkatari, Tehsil
Thanesar, District Kurukshetra, Haryana-125007 ... Applicant;

Versus

State of Haryana, through the Secretary, Public Works Department
(Water Supply and Sanitation) Haryana Civil Secretariat,
Chandigarh-160001 ... Respondent.

Application No. 124 of 2013
Decided on September 12, 2013

Counsel for Appellants:

Mr. Rohit Sharma, Advocate.

Counsel for Respondents:

Mr. Manjit Singh, Additional AG.

The Judgment of the Court was delivered by

SWATANTER KUMAR, CHAIRPERSON:— Besides controverting the factual averments made by the applicant in his application, the respondent has challenged the very maintainability of the present application on the ground that it is hopelessly barred by time and also in view of the fact that no environmental clearance is contemplated in law for establishing a Sewage Treatment Plant (for short the 'STP'). It is contended by the respondent, State of Haryana, that the application under consideration has been filed much beyond the prescribed period of limitation under Section 14(3) of the National Green Tribunal Act, 2010 (for short 'the NGT Act'). The public at large, including the applicant had the knowledge when the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 were published in the newspaper on 14th/15th January, 2010 while the present application has been instituted on 24th May, 2013, which is highly delayed having been filed much beyond the period of six months + additional 60 days in terms of Section 14(3) of the NGT Act. The application is hopelessly barred by time and beyond that period the Tribunal has no jurisdiction to condone the delay in face of the language of Section 14(3) of the NGT Act.

2. With the consent of the learned counsel appearing for the parties, this point of limitation in issue was treated as preliminary issue and thus, we proceed to deal with only the question of limitation at the first instance.

3. The applicant claims to be the owner in possession of the fertile agricultural land comprised in Hadbast No. 386, Khewat No. 1, Khasra Nos. 300, 301, 302, 303, 307 and 308 in Village Narkatari, Tehsil Thanesar, District Kurukshetra, Haryana. The respondents are proposing to set up an STP in Khasra Nos. 200 to 222 across the 40 feet road from the applicant's land. The applicant has filed a map showing the location of the STP. According to that plan, the STP is located at a distance of only 35 mts. from the residential colony across the road where the applicant's land is located. Just adjacent to the land of the applicant, there is an old *Hanuman Mandir* of immense religious and cultural significance for the entire locality. The STP, besides causing serious environmental issues, is also hurting the religious sentiments of the people and is contrary to the rules governing the subject. The Gram Panchayat for Village

Narkatari had passed a resolution on 20th May, 2013 stating that the current location of the STP is not in general public interest and the STP should be located at some distance from the village *abadi*. The Trust, Bhishma Pitamah Ban Ganga Mandir Society, had also passed a resolution stating that the construction of the STP so close to the 26 foot image of *Shri Hanuman ji* would damage the historical significance of the temple besides hurting the religious sentiments of the villagers as well as the followers who visit the temple.

4. It is the specific case of the applicant that the action of the respondent in establishing the STP at the site in question is in direct contravention of the Environmental Clearance Notification, 2006 (for short the 'Notification of 2006') which stipulates the requirements for such projects to obtain prior EC even before the commencement of the work. In terms of this Notification, all the four stages of Screening, Scoping, Public Hearing and Appraisal have to be completed before the EC could be granted to such a project. The STP of the kind that is proposed to be established at the site in question falls in Category 'B' of projects in the schedule to the Notification. It is specifically covered under clauses 7(h) and (i) of the Schedule. The EC is to be considered and granted by the State Environmental Impact Assessment Authority (SEIAA), and since no prior EC has been obtained as envisaged under the Notification, no construction could be permitted to be commenced for the proposed STP. Even the action of the respondent in completing the acquisition process, without assessing the environmental impact of the proposed STP is in contravention of the law laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Area Development Board v. C. Kenchappa*, (2006) 6 SCC 371 where the Court stated that, "in future before acquisition of lands for development, the consequences and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment". The STP is located so near to the residential colonies, religious place and the agricultural lands that it would have an adverse effect on the surrounding environment like generation of odour, breeding of mosquitoes, which would result in various bacterial diseases, fungus, parasites, increase in noise levels and visual problems. On the above factual matrix of the case, the applicant has filed a petition under Sections 14, 15(b) and (c) read with Sections 18(1) and (2) of the NGT Act praying that the respondent be restrained from carrying on construction activity of the proposed STP at the site in question and also to direct it to re-locate the proposed project to an alternative location.

5. According to the applicant, he came to know of the setting up of the STP at the site in question from the newspaper dated 19th May, 2013 and he has filed the present application without any delay on 24th May, 2013. Not only this, even the Gram Panchayat had passed the resolution opposing establishment of STP at the site in question on 20th May, 2013 which was then widely circulated. In these circumstances, the knowledge attributable to the applicant, which would provide a 'cause of action' to the applicant to institute the present application would relate to 19th/20th May, 2013. Thus, the 'cause of action' relating to the environmental issues for institution of the present application arose when it was disclosed with certainty by the authorities concerned that STP shall be located at the site in question. Earlier proceedings relating to subject matters other than environment cannot be a 'cause of action' for invocation of the provisions of Section 14 of the NGT Act. The respondent filed its reply and took the stand that the STP at the site in question is based upon the latest technology that is Moving Bed Biofilm Reactor (MBBR) which works on aerobic process. The site is on natural flow/slope gradient and far away from the village *abadi*. The land had been acquired for this very purpose and no other suitable site was available. According to the respondent, there is neither a possibility of any kind of nuisance caused to the public or inhabitants residing nearby, nor is there any possibility of environmental

pollution. Presently, the sewage water is flowing through an open drain. Once the plant is established the entire sewage water will flow through a rising main (pipe) from existing disposal to the proposed Sewage Treatment through underground pipeline of 1000 mm i/d diameter from a distance of 2.1. kms., i.e. from the town itself. The Biochemical Oxygen Demand (BOD) will reduce to 10 mg/l against the present level of 200 mg/l. After treatment, the effluent will be discharged in existing siphon under the SYL channel through RCC carrier pipes of 1000 mm i/d diameter of length 2.5 kms, i.e. at a distance of two and a half kilometer from the site of the STP. It is specifically averred that the Notification of 2006 does not cover a project relating to establishment of STP as none of the entries in the Schedule to this Notification specifically state or mention the establishment of STPs. Thus, the entire petition is stated to be ill-founded and untenable. With regard to the objection relating to limitation, it is stated that the notifications under Sections 4 and 6 of the Land Acquisition Act were published in different newspapers including the Times of India and Punjab Kesari on 14th January, 2010 and 15th January, 2010 respectively. Both these papers have circulation in the State of Haryana. Despite having gained knowledge that the land had been acquired for establishment of STP in the year 2010 the applicant did not take any action till 2013 and therefore, the petition is barred by time and laches. The Collector had also passed his award which was also known to all the persons. It is also stated that the notification under Section 4 was challenged in the case of *Amar Pal v. State of Haryana* before the High Court of Punjab and Haryana at Chandigarh, which came to be disposed of by an agreed order in regard to substitution of Khasra numbers stated in the notification. The applicant had the complete knowledge about the intention of the State to set up an STP project at the site in question in the year 2010. Hence, the application now filed, in the year 2013, is hopelessly barred by time. In any case, the Tribunal has no jurisdiction to condone the delay beyond six months' plus 60 days from the date the cause of action had arisen. The respondent has also averred that the project is likely to cause a loss of nearly 27 crores of rupees to the government out of which 1/3rd expenditure has already been incurred. The project is for public welfare and will help in the protection of environment, thus, they pray for dismissal of the application.

6. In light of the above contentions and pleadings of the parties, we are called upon to consider and answer the following two questions:

1. Whether the application filed by the applicant is barred by time and whether the Tribunal has any jurisdiction to condone the said delay?
2. Whether it is mandatory for a project proponent to obtain environmental clearance prior to the establishment of STP?
7. At the very threshold, it will be useful to refer to the relevant provision of the NGT Act that prescribes limitation for institution of an application. Section 14 of the NGT Act reads as under:

“14. Tribunal to settle disputes—

- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
- (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
- (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:
Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period,

allow it to be filed within a further period not exceeding sixty days."

8. From a bare reading of the above provision, it is clear that the Tribunal has jurisdiction over all civil cases where substantial question relating to environment is involved and such question arises out of implementation of the enactments specified in Schedule I to the NGT Act. Sub-section (3) of Section 14 deals with the period of limitation. It opens with a negative expression and requires that the application for adjudication of disputes under Section 14 has to be filed before the Tribunal within a period of six months from the date on which the cause of action for such dispute first arose. However, this sub-section contains a proviso which empowers the Tribunal to entertain an application beyond the period of six months but not exceeding a further period of sixty days, provided the applicant is able to show that he was prevented by sufficient cause for filing the application within the prescribed period of six months.

9. The unassailable position of law that emerges from the reading of Section 14(1), 14(3) and the proviso to Section 14(3) of the NGT Act is that the Tribunal will have no jurisdiction to condone the delay beyond sixty days after the expiry of six months from the date on which the cause of action for such dispute first arose. The legislature, in its wisdom, has worded Section 14(3) of the NGT Act in a negative manner and has placed a limitation upon the power of the Tribunal to condone the delay. This is the provision governing the limitation, and therefore, must be construed upon its plain reading. Firstly, the Tribunal, in the absence of the proviso to Section 14(3), would have no jurisdiction to entertain the application raising an environmental issue beyond the prescribed period of six months. It is only with the aid of proviso to Section 14(3) of the NGT Act that the Tribunal can exercise the power to condone the delay beyond the prescribed period of six months but with a further restriction that the application ought to have been filed within sixty days of expiry of the period of six months, as prescribed under Section 14(3) of the NGT Act.

10. This Tribunal, in one of its recent judgments in the case of *Nikunj Developers v. The State of Maharashtra* [2013 ALL (I) NGT (1) PB 40] has taken a view that the statutorily prescribed limitation has to be strictly adhered to and cannot be relaxed merely on equitable grounds. Further, applying the rule of literal construction, the Tribunal also stated that it cannot be vested with the power to condone the delay beyond the period of 90 days, as prescribed under Section 16 of the NGT Act, which is worded identically to the proviso to Section 14(3) of the NGT Act. Referring to the judgment of the Supreme Court in the case of *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission*, (2010) 5 SCC 23, the Tribunal stated that keeping in view the language of Section 16 of the NGT Act and such similar provision like Section 35 of the Central Excise Act, 1944, which are *para materia*, the authorities cannot entertain the appeal by condoning the delay beyond the specified period, even if there was complete exclusion of Section 5 of the Limitation Act. Normally, the grammatical construction of the limitation provision is the only safe guide. The Supreme Court in the case of *R. Rudraiah v. State of Karnataka* [(1998) 3 SCC 23] held that it is the duty of all courts of justice to take care of general good of the community. Hard cases do not make bad law. Limitation may work to cause injustice in particular cases but hardship is not a reason to depart from the normal rule to relieve the hardship. Thus, on a plain reading of the above provision, it is clear that the contention of the respondent that beyond the period of six months plus sixty days, the Tribunal will have no jurisdiction to condone the delay, cannot be faulted.

11. However, the incidental but most significant question that has to be answered by the Tribunal is, as to whether the application filed by the applicant was filed beyond the above stated period (six months plus sixty days) or not.

12. Before we refer to the factual aspects of the present case relating to limitation, it will be imperative for us to examine various legal niceties of Section 14 of the NGT

Act. Section 14 of the NGT Act vests a very wide range of powers in the Tribunal to entertain applications including enforcement of legal rights relating to environment, where they arise out of implementation of the enactments specified in Schedule I to the NGT Act. Sub-section (3) of Section 14 can be dissected as follows:

- (a) No application for adjudication of disputes under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.
- (b) The Tribunal may, if it is satisfied that the applicant was prevented by a sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

13. The NGT Act has been enacted with the object of providing for establishment of this Tribunal for the 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 and for giving other contemplated reliefs and even dealing with matters incidental thereto. The Tribunal thus, has original jurisdiction in terms of Section 14 of the NGT Act. This wide jurisdiction is expected to be exercised by the Tribunal in relation to substantial questions relating to environment or enforcement of legal rights relating to environment, when it arises from the implementation of one or more of the Acts specified in Schedule I to the NGT Act. The pre-requisite for the applicant to invoke original jurisdiction of the Tribunal, subject to other limitations stated in Section 14 of the NGT Act, is that the application must raise substantial question relating to environment. This Tribunal, in the case of *Goa Foundation v. Union of India*, pronounced on 18th July, 2013, on the scope of the expressions 'substantial question relating to environment' as well as 'dispute', as referred to in Section 14 of the NGT Act, held as follows:

"24. Section 2(m) of the NGT Act classifies 'substantial question relating to environment' under different heads and states it to include the cases where there is a direct violation of a specific statutory environmental obligation as a result of which the community at large, other than an individual or group of individuals, is affected or is likely to be affected by the environmental consequences; or the gravity of damage to the environment or property is substantial; or the damage to public health is broadly measurable. The other kind of cases are where the environmental consequences relate to a specific activity or a point source of pollution. In other words, where there is a direct violation of a statutory duty or obligation which is likely to affect the community, it will be a substantial question relating to environment covered under Section 14(1) providing jurisdiction to the Tribunal. When we talk about the jurisdiction being inclusive, that would mean that a question which is substantial, debatable and relates to environment, would itself be a class of cases that would squarely fall under Section 14(1) of the NGT Act. Thus, disputes must relate to implementation of the enactments specified in Schedule I to the NGT Act. At this stage, reference to one of the scheduled Acts i.e. Environment Protection Act, 1986 may be appropriate. The object and reason for enacting that law was primarily to address the concern over the state of environment that had grown the world over. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. These were the considerations that weighed with the legislature to ensure implementation of the UN Conference on the Human Environment held at Stockholm in June, 1972 to take appropriate steps for protection and improvement of human environment. The essence of the legislation, like the NGT Act, is to attain the object of prevention and protection of environmental pollution and to provide

administration of environmental justice and make it easily accessible within the framework of the statute. The objects and reasons of the scheduled Acts would have to be read as an integral part of the object, reason and purposes of enacting the NGT Act. It is imperative for the Tribunal to provide an interpretation to Sections 14 to 16 read with Section 2(m) of the NGT Act which would further the cause of the Act and not give an interpretation which would disentitle an aggrieved person from raising a substantial question of environment from the jurisdiction of the Tribunal.

* * *

35. The expression 'disputes' arising from the questions referred to in sub-section (1) of Section 14 of the NGT Act, is required to be examined by us to finally deal with and answer the contentions raised by the parties before us. The expression used in sub-section (1) supra is the expression of wide magnitude. The expression 'question' used in sub-section (1) in comparison to the expression 'dispute' used in sub-section (2) of section 14 is of much wider ambit and connotation. The disputes must arise from a question that is substantial and relates to environment. This question will obviously include the disputes referred to in Section 14(2). It is those disputes which would then be settled and decided by the Tribunal. These expressions are inter-connected and dependent upon each other. They cannot be given meaning in isolation or *de hors* to each other. The meaning of the word 'dispute', as stated by the Supreme Court in *Canara Bank v. National Thermal Power Corporation*, (2001) 1 SCC 43 is "a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other". The term dispute, again, is a generic term. It necessarily need not always be a result of a legal injury but could cover the entire range between genuine differences of opinion to fierce controversy. Conflicts between parties arising out of any transaction entered between them is covered by the term 'dispute'.

36. The counsel appearing for the respondents, while referring to this expression, relied upon the judgment of the Supreme Court in the case of *Inder Singh Rekhi v. DDA*, (1988) 2 SCC 338 to support the contention that the dispute, as referred under the Arbitration Act, 1940 arises where there is a claim and there is a denial and repudiation of such claim.

37. The judgment relied upon by the respondents is not of much help to them inasmuch as the Arbitration Act, 1940 operates in a different field and the meaning to the expression dispute appearing in that Act has to be understood with reference to the provisions of that Act specifically. The said Act is only intended to resolve the disputes between two individuals arising out of a transaction under the Arbitration law. However, the present case, the NGT which relates to environment as such. It is not individual or a person centric but is socio-centric, as any person can raise a question relating to environment, which will have to be decided by the Tribunal with reference to the dispute arising from such a question. It is not necessary that such a question must essentially be controverted by other person or even the authority. The essence of environmental law is not essentially adversarial litigation. To give an example, could any authority or person deny the question relating to cleanliness of river Yamuna? Any person could approach the Tribunal to claim that the pollution of Yamuna should be controlled, checked and even prevented. None of the parties or authorities may be able to dispute such a fact may even contend that steps are required to be taken to control, prevent and ensure restoration of clean water of Yamuna. Thus, dispute as understood to be raising a claim and being controverted by the other party is not apparently the *sine qua non* to invocation of Tribunal's jurisdiction under the scheme of Sections 14 to 16 of the NGT Act. This approach is further substantiated from the use of the expressions 'cases relating to

environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto' used in the preamble of the Act"

14. In the present case, the applicant has invoked the jurisdiction of the Tribunal under Section 14 of the NGT Act with regard to establishment of STP on a location which, according to the applicant, is bound to create environmental problems and would adversely affect the public health. It will result in pollution of underground water besides causing emission of obnoxious gases and creating public nuisance, owing to being adjacent to residential colony and religious places. Thus, it would certainly involve a question relating to environment arising from the implementation of Acts specified in Schedule I to the NGT Act. Thus, the present case indisputably falls within the jurisdiction of the Tribunal, of course, subject to the plea of limitation.

15. To further examine the question of limitation, we must deliberate upon what does the expression 'cause of action' mean. Furthermore, such cause of action has to relate to 'such dispute', as stated in Section 14 of the NGT Act. The period of six months shall be computed from the date on which the cause of action first arose in relation to such dispute. Both the expressions — 'cause of action' and 'such dispute' — have to be read together. One of the settled rules of construction is *noscitur a sociis* i.e. the meaning of a word or an expression is to be judged by the company it keeps. Deliberating upon the application of this rule of interpretation, Justice G.P. Singh, in his book "*Principles of Statutory Interpretation*", 13th ed. 2012, while referring to a decision by Privy Council, *inter alia*, has stated:

"It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. It is a rule wider than the rule of *ejusdem generis*; rather the latter rule is only an application of the former". The rule has been lucidly explained by GAJENDRAGADKAR, J. in the following words: "This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases. Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*."

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 Assn. 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, pre-requisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised.

18. Having dealt with the legal aspect relating to limitation, we must now deal with the facts of the present case. It is an undisputed position before us that the notification under Section 4 of the Land Acquisition Act for acquisition of the land to set up an STP had been issued by the competent authority on 10th January, 2010 and was published in the newspapers on 14th/15th January, 2010. Thereafter, the news item was published on 19th May, 2013 and 20th May, 2013 declaring that the path for installation of STP outside the city had been finally cleared and the plant shall be set up soon and would become a reality. On 20th May, 2013, the Gram Panchayat,

Narkatari, passed a resolution stating that it had come to know that the land stated in the notification, measuring about 18 acres, had been acquired and the STP was being set up there, and for the reasons stated therein, was opposing the same. The resolution also noticed that the Government was bent upon installing the plant, which was not in public interest. The Municipal Councillor, Thanesar, upon a meeting with the residents of Ward No. 27, Shanti Nagar, Kurukshetra, had also raised serious objections with regard to the construction of the STP at the site in question. He, *inter alia*, referred to the adverse impact on the life of Dalit Colony near the plant. Also, there was the Bhism Kund Baan Ganga religious spot in close proximity of the plant, where pilgrims come from various parts of the country. Further, a petition was filed before the High Court challenging the acquisition of the land in question which came to be known as Civil Writ Petition No. 18732 of 2011 and was disposed of by the High Court by a consented order dated 21st December, 2012.

19. It is evident from the above facts that the establishment of the STP at the site in question or the substituted Khasra numbers came to public light and became a contentious issue between the Government and the public at large raising health and environmental issues in the year 2013. It is noteworthy that all the representations, objections, etc. were made to the declaration notified in the newspapers on 19th May, 2013 that the STP was going to be set up at the site in question.

20. According to the applicant, the limitation will trigger from 2019/20th May, 2013, when the matter in relation to finally setting up the STP at the site in question was published in the newspapers. The applicant filed the application on 24th May, 2013 i.e. within a few days of his acquiring the knowledge when the cause of action arose in his favour. Furthermore, the establishment of the STP at the site in question received wide publicity on 19/20th May, 2013 whereafter many individuals, public organisations and, in fact, the public at large, raised objection to the construction of the STP, thus, giving rise to various environmental issues during that period. Therefore, the application filed by the applicant is within the prescribed period of limitation.

21. On the contrary, according to the respondent, the cause of action arose when the notification under Sections 4 and 6 of the Land Acquisition Act was issued on or about 7/10th January, 2010. This notification was published in the newspapers. Therefore, the applicant would be deemed to have knowledge of establishment of the STP in January, 2010 whereas the petition was filed in the year 2013. The application is, therefore, barred by time as the delay is more than 60 days over the prescribed period of six months from the date of cause of action and the Tribunal has no jurisdiction to condone the delay.

22. The entire controversy revolves as to the effect of the issuance of the notification under Sections 4 and 6 of the Land Acquisition Act and whether it will constitute cause of action under the NGT Act. We have no hesitation in answering this question in the negative. The reasons for the same are that the notification issued under Sections 4 and 6 of the Land Acquisition Act *per se* does not raise a substantial question relating to environment. This notification is for a different and distinct purpose. The provisions of the Land Acquisition Act operate in an entirely different realm/field and have distinct consequences. The questions arising in relation to the validity of acquisition or payment of compensation do not constitute 'dispute' within the meaning of and for the purpose of Section 14 of the NGT Act. The Tribunal, in any case, would have no jurisdiction to venture upon the adjudication of such an issue. Furthermore, the Government was competent to change the 'public purpose' stated in the notification under Section 4 and even could de-notify the area or give up the entire project upon hearing objections under Section 5 of the Land Acquisition Act. Change of purpose and de-notification by the State Government in accordance with law is permissible. If the Government would have de-notified the land from acquisition or if

the High Court had quashed the notification under Section 4 of the Land Acquisition Act, then the entire project of STP would have come to an end and the proceedings, if any, initiated by the applicant under the NGT Act would have been an exercise in futility.

23. Another important aspect is that the location, the Khasra number, etc. sought to be acquired under Section 4 of the Land Acquisition Act could be changed by the competent authority while issuing the notification under Section 6 of the Land Acquisition Act. The High Court, vide its order dated 21st December, 2012 permitted the change of Khasra number by agreement. In other words, the very location of the STP, from the initial site, stood changed to khasra number recorded in the order of the High Court. These were very material changes but fell within the field of acquisition proceedings. They do not have any impact on environmental issues in regard to establishment of the STP.

24. In these circumstances, it cannot be stated that the cause of action contemplated under Section 14 of the NGT Act could be related to and deemed to have triggered the period of limitation for the purpose of Section 14 of the NGT Act. The cumulative effect of the above discussion would be that, the limitation has to be computed from the date when there was a firm decision by the Government or other authorities concerned to establish the STP at the site in question and it was so publicly declared and the date for the same being 19/20th May, 2013 and the applicant having filed the petition within a few days (within the prescribed period of limitation of six months), the question of the application being time barred does not arise. Another contention was also raised before us that it being a continuing cause of action, the objection raised by the respondent would be of no consequence. We do not consider it necessary to deal with this contention in any elaboration in view of the finding returned by us above that the petition is not at all barred by time.

25. In the recent past, there had been global environmental concerns. Environmental and ecological issues drew the attention of various authorities and bodies all over the world as adverse impact on environment of one country could prejudicially affect the citizenry and environment of the other country. These concerns at different quarters led to the United Nations Conference on Human Environment at Stockholm in June 1972. India participated in this Conference and then decided to take steps for protection and improvement of environment in India resulting in, amongst others, the enactment of the Environment (Protection) Act, 1986 (for short 'Act of 1986'). This Act of 1986 defines in Section 2(a) "Environment" as follows:

"environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property."

26. It may be noticed at this stage itself that the NGT Act also defines 'environment' in identical terms to the definition of 'environment' in the Act of 1986. The term 'environmental pollutant' has also been defined under the Act of 1986 to mean any solid, liquid or gaseous substance present in such concentration as may be or tend to be injurious to the environment. 'Handling' in relation to any substance means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substances. 'Hazardous substance' means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human being, other living creatures, plants, micro-organisms, property or the environment. These definitions under the Act of 1986 give us an idea of the legislative intent in relation to the protection and improvement of environment contemplated under the scheme of the Act of 1986. The expression 'environment' has been defined in very wide terms and its definition being inclusive in nature, would not be exhaustive

and would cover everything that a human being can think of in relation to water, air and land, living creatures, plants etc. The 'environmental pollutants' again have been defined in terms of very wide magnitude so as to include all kinds of pollutants which will or are even likely to adversely affect the environment or injure the same.

27. The word 'environment' is an expression of broad spectrum which inculcates in its sweep both hygienic atmosphere and ecological balance. The right to life with human dignity encompasses within its ambit the preservation of environment, ecological balance free from air and water pollution. It also includes maintaining proper sanitation without which it may not be possible to enjoy life. The conduct or actions, which would cause environmental pollution and disturb the ecological balance should be regarded as violation of Article 21 of the Constitution of India. Therefore, promoting environmental protection implies maintenance of environment as a whole comprising the man-made and the natural environment. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. Thus, there is a constitutional imperative on the State Governments and the municipalities to take adequate measures to promote, protect and improve both the man-made and the natural environment (Refer: *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577).

28. The judicial precedents by various Courts, including the Hon'ble Supreme Court of India, have expanded Article 21 of the Constitution of India to include the right to clean and decent environment. Right to live with human dignity, hence includes, the right to clean environment, as no human being can properly enjoy his life and living unless the environment surrounding him is hygienic, clean and decent. This is the concept of environment as understood under the Indian Environmental and Constitutional jurisprudence. When one makes a conjoint reading of the Act of 1986 and other environment legislations along with the provisions of the NGT Act, only one conclusion is possible and that is, that the Legislature intended to give environment the widest meaning on the one hand and protection to the same of highest order on the other. It has equated the right to clean environment to the fundamental rights enshrined in Chapter III of our Constitution and has also provided for effective and expeditious disposal of the environmental issues. Once the environment is understood in its wide spectrum and correct perspective, then all the matters which cause or are likely to cause environmental pollution or injury would be the matters covered under the provisions of the above referred legislations. The Notification of 2006 deals with the manner and methodology in accordance with which the EC is to be granted to various projects and activities. Under Regulation 2 of the Notification of 2006, it is prescribed that the projects or activities which are specified in the Schedule to the Notification of 2006, would require EC from the competent authority. Projects falling under Category 'A' in the Schedule of the Notification of 2006 would require EC from the Ministry of Environment and Forests (MoEF) while the projects falling in the Category 'B' would be required to be granted EC by the State Environmental Impact Assessment Authority (SEIAA). Such projects should take EC before any actual or even preparatory works are carried out by the project proponent except to the extent of securing land for the project. All new projects or activities listed in the Schedule would require such clearance. The expansion or modernization of the projects or activities, which crosses the threshold limits given in the Schedule, would also require such clearance. Thereafter the process of categorization of the project, selection of site, screening, scoping and appraisal has to be followed, finally culminating into grant or refusal of the EC by the said authorities. The Schedule to the Notification of 2006 refers to various projects and activities that would require such environmental clearance. In the present case, the applicant has placed reliance upon Clause 7(h) and (i) of the Schedule, which is relatable to Regulation 2 and 7 of the Notification of 2006. The said entries of the Schedule read as under:—

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
7		Physical Infrastructure including Environmental Services		
(1)	(2)	(3)	(4)	(5)
7(h)	Common Effluent Treatment Plants (CETPs)		All projects	General Condition shall apply
7(i)	Common Municipal Solid Waste Management Facility (CMSWMF)		All projects	General Condition shall apply

29. In terms of the above entries of the Schedule, all projects relating to common effluent treatment plants and common municipal solid waste management facility fall in category 'B' of the Schedule and would, therefore, require EC from SEIAA.

30. The contention of the applicant is that both these entries have to be construed liberally so as to achieve the object of the Act, thus, covering even the STPs under these entries. On the contrary, the contention on behalf of the respondent is that, since the STPs have not been specifically included in the Schedule to the Notification of 2006 when other projects or activities have been, it must follow that STP has been excluded from the operation of the Schedule and thus, no EC needs to be obtained by the project proponent from SEIAA. Thus, firstly we have to consider whether these entries should be construed strictly or liberally and if so to what effect.

31. The Supreme Court in the case of *Commissioner of Income Tax v. Teja Singh*, AIR 1959 SC 352 held that a statute or any enacting provision therein, must be so construed as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat*.

32. While dealing with a social welfare legislation, the provisions and the words therein are to be given a liberal and expanded meaning. Of course, liberal construction does not mean that the words shall be forced out of their natural meaning but they should receive a fair and reasonable interpretation so as to attain the object for which the instrument is designed and the purpose for which it is applied. Both the object and purpose in relation to its application are thus, relevant considerations for interpretation. The Courts have also permitted departure from the rule of literal construction so as to avoid the statute becoming meaningless or futile. In the case of *Surjit Singh v. Union of India*, (1991) 2 SCC 87 and *Sarajul Sunni Board v. Union of India*, AIR 1959 SC 198, the Supreme Court has also held that it is not allowable to read words in a statute which are not there, but where the alternative allows, either by supplying words which appear to have been accidentally omitted or by adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words. It is also a settled cannon that in case of a social or beneficial legislation, the Courts or Tribunals are to adopt a liberal or purposive construction as opposed to the rule of literal construction.

33. In light of the above stated three principles, let us examine the object and purpose of the above legislations and the meaning that the entries under Clause 7(h) and (i) of the Schedule to the Notification of 2006 should receive. The object of the legislation is to protect, sustain and improve the environment. So an interpretation, which would further this object has to be adopted rather than a strict construction,

which may result in rendering the very object and provisions of such legislations ineffective and futile. We are not oblivious to the restrictions to the rule of liberal construction, but in the case of a social or beneficial legislation, particularly relating to a subject like the environment, adoption of the liberal rule of construction would be more appropriate. An interpretation which would practically frustrate the very purpose of inclusion of the common affluent treatment plants and municipal solid waste management plants to entries 7(h) and (i) should be avoided and the one which would attain the object and further the purpose of these provisions should be adopted. It cannot be disputed, even by any stretch of imagination, that STP is established to treat a very serious pollutant i.e. sewage, and STP itself is a potential pollutant in the event of any mis-happening. It has the potential to cause environmental degradation and adversely affect the public health. Thus, it could be said that the framers of the law on the one hand intended to make the provisions prescribing stringent measures, imposing heavy penalties and ensuring adherence to the prescribed standards of environment for its prevention and control, while on the other hand excluded from the scope of Notification of 2006, such projects which are dealing with serious pollutants and are in itself potentially hazardous.

34. The legislative intent behind enacting a particular statute is one of the relevant considerations in regard to the interpretation of the same. The courts do examine the legislative intent to find the real object and purpose of an Act and the scope of application of its various provisions. The entries in the Schedule to the Notification of 2006 have to be construed purposively so as to achieve the object of the principle legislation and not to interpret them so narrowly as to frustrate the very object behind enactment of the same i.e. for prevention and control of environmental pollution.

35. It is an acknowledged fact that the sewage in any town travels through open drains where large amounts of industrial waste, domestic discharge and trade effluents are directly or indirectly discharged into such drains. Before these drains reach the STPs, they undoubtedly contain sewage and other trade effluents, including chemical effluents. In other words, it is mixed effluent and not a sewage waste simplicitor.

36. Entry 7(i) of the Schedule to the Notification of 2006 deals with establishment of the projects relating to any municipal solid waste management facility. The Notification of 2006 does not define 'municipal solid waste'. However, the Municipal Solid Waste (Management and Handling) Rules, 2000, under Rule 3(xv) defines 'Municipal Solid Waste' as follows:—

““municipal solid waste” includes commercial and residential wastes generated in a municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes;”

37. From the plain language of the above provision, it is clear that such waste would include commercial and residential waste generated in a notified area. Importantly, it includes both solid and semi-solid waste but excludes industrial hazardous waste. This definition opens with inclusive words, then specifically provides what is excluded from its ambit and scope then further includes even the bio-medical wastes. This definition is generic and is an inclusive definition which simultaneously provides for exclusion of industrial hazardous waste. When the framers have specifically provided for the exclusion in no uncertain terms and the definition being inclusive and not exhaustive in nature, the other wastes, and particularly wastes of semi-solid nature, would be deemed to be included in this definition. It is a uniformly accepted norm of interpretation that the word 'includes' when used in a definition clause would reflect that the Legislature does not intend to restrict the definition. It makes the definition enumerative but not exhaustive. 'Sewage' primarily arises from the residential areas and contains amongst others, as noticed above, other domestic waste and some trade effluents as well. This definition, therefore, would include

municipal waste of the semi-solid nature, which is not resulting from the industrial hazardous wastes.

38. At this stage, we may also refer to some literature that have been relied upon by the applicant. United Nations Environment Programme, in the guidelines for the preparation of an environmental impact assessment document for STP's, in 1991 in particular have provided that the STP's are constructed to transport raw sewage into municipal waste and retrieve and re-use treated sewage water. End products of STP's are sludge and treated sewage water. Both can contain, in addition to organic bio-medical substances and micro-organisms, non-biogradable and toxic substances as well, due to contamination of sewage with industrial water. Most STP's and disposal processes are serious sources that create offensive odour.

39. The MoEF, Government of India, has provided a technical EIA Guidance Manual for common municipal solid waste management facilities. Annexure VII to this Manual is the application form prescribed for obtaining EIA Clearance in Form 1. A project proponent is required to take clearance upon filling up of such form. Clause 4 of this Form deals with production of solid waste during construction or operation or decommissioning, under which in Column 4.6, the project proponent is supposed to provide details of the sewage sludge or other sludge released from effluent treatment and under Column 4.2, it is supposed to state with details of municipal waste (domestic and/or commercial waste) which the unit is likely to discharge. This shows an appropriate linkage between municipal solid waste and the sewage to determine the proper impact on environment. We may also refer to the observations of the Hon'ble Supreme Court of India in the case of *Almritra H. Patel v. Union of India*, (2000) 2 SCC 679 where in paragraph 13 of the judgment, the Supreme Court held "domestic garbage and sewage is a large contributory of solid waste. The drain system in a city is intended to cope with household effluents. This is so in a planned city. But when a large number of inhabitants live in unauthorised colonies with no proper dealing with the domestic effluents or in slums with no care for hygiene, the problem becomes more complex". This itself shows that the highest Court of the land treated domestic waste as containing both the elements, i.e. garbage and sewage. The above discussion clearly demonstrates that the 'common municipal solid waste management facility' would take within its ambit, even such plants that deal with sewage, which essentially is a semi-solid municipal waste and is required to be treated and managed by the municipal authorities in discharge of their statutory duty. As already noticed, even with the mandate of Article 21 of the Constitution of India, the municipal authorities are under an obligation to ensure proper collection, treatment and utilization of the end product in relation to sewage.

40. Now, we shall proceed to discuss the alternative contention on behalf of the applicant that such STP's would be covered under Clause 7(h) of the Schedule to the Notification of 2006. By framing the Schedule to the Notification of 2006, the legislature has attempted to specify the projects which are required to take EC from the competent authorities before establishment and operation of any projects specified therein. The Schedule has a reference to Regulations 2 and 7 of the Notification of 2006. In terms of paragraph (2), every project and activity specified in the Schedule requires environmental clearance. The expression 'activity' is of a very generic nature and in fact, is incapable of being described in definite terms. This expression has been used in addition to the term 'project'. Projects normally are referred to an industrial or other process which are of definite character. The expression 'activity', being of a very generic nature is capable of wide connotation. Paragraph (4) of the 2006 Notification, while categorizing all projects and activities into Category A and Category B, uses in sub-para (ii) of Para 4 the word 'included', which again, would mean that these are not exhaustive in definite terms. Certain leverage has to be provided while expanding or explaining the terms used under various entries of the Schedule to Notification of

2006. They would require liberal construction to achieve the object of the legislations enumerated in Schedule I to the NGT Act. The same has been held even in regard to the entries in the Constitutional lists, the same being the fields of legislation, which have received liberal construction, inspired by a broad and generous spirit and not a narrow or pedantic approach (Refer: *Rajiv Sarin v. State of Uttar Pradesh*, (2011) 8 SCC 708).

41. 'Common effluent treatment plant' (for short the 'CETP'), on its plain reading would mean a treatment plant that treats the common effluents to produce a non-pollutant end product, is non-pollutant. The expression 'effluent' has neither been defined under the Act of 1986 nor under the Water (Prevention and Control of Pollution) Act, 1974 (for short the 'Water Act'). Even the Hazardous Wastes (Management and Handling) Rules, 2008 do not define the term 'effluent'. In common parlance, 'effluent' is explained as liquid waste or sewage discharged into a river or the sea or any water body. (Refer: *Oxford English Dictionary* and *The Black's Law Dictionary*, Ninth Edition). However, the same dictionary defines 'industrial effluent' as an effluent contaminated with trade effluents.

42. The above explanation shows that 'effluent' can be in various forms and is discharged into different water bodies or places where it would affect the water and in turn the environment in one form or the other.

Need for Environment Clearance

43. The Notification of 2006 is the regulatory regime in relation to protection and betterment of environment. It provides how and in what manner clearance is to be granted to various projects and activities to ensure adherence to maintenance of environmental standards. What should be the prescription for trade and industrial effluent and what kind of standards are to be maintained, including whether a project has satisfactorily installed STP and other anti-pollution devices, is primarily intended to ensure that no injury is caused to the environment. Thus, the Notification of 2006 furthers the cause and object of the environmental legislations in our country.

44. Effluent means discharge of any liquid gaseous or other substances into water bodies etc., and would take within its ambit even discharge of sewage coupled with other industrial and trade effluents. Such effluent would be required to be treated at a CETP of which STP itself may be an integral part. As we have already noticed and even anticipated, the drains which carry the sewage also contain other domestic discharge. Industrial and trade effluents get discharged directly into the drains by the industries or other activities which generate polluted effluents. Thus STP would have to treat effluents which contain even other pollutants than sewage simplicitor.

45. MoEF, Government of India, while dealing with the operational requirements of technical EIA clearance of effluent treatment plants, have, in paragraph 4.1 of the guidance manual stated as follows:

"Coverage of CETPs under the Purview of Notification

All new CETP projects including expansion and modernization require prior environmental clearance. Based on pollution potential, these projects irrespective of the capacities are classified into Category B.

The Notification covers treatment plants which serve different industries not in the same premises for common/combined wastewater. The Notification excludes ETPs serving different production units within the same individual industry premises, which are integrated to operation.

Besides there are general conditions, when it applies, a Category B project will be treated as Category A project. These conditions are discussed in subsequent sections.

It also covers sludge handling, discharging pipeline and disposal point studies.

It covers combined wastewater treatment plants i.e., CETPs accepting sewage also along with industrial effluents for better treatability. For clarity, any treatment plant having more than 10% of industrial contributions by volume shall be treated as a combined treatment plant.

The sequence of steps in the process of prior environmental clearance for Category B and Category A projects are shown in Figure 4.1 and Figure 4.2 respectively. Each stage in the process of prior environmental clearance for the CETP is discussed in subsequent sections. The timelines indicated against each stage are the maximum permissible timelines set in the Notification for said task. In case the said task is not cleared/objectioned to by the concerned Authority, within the specified time, said task is deemed to be cleared, in accordance to the proposal submitted by the proponent.

In case of *Expansion or Modernization of the developmental Activity*:

Any developmental activity, which has an EIA clearance (existing project), when undergoes expansion or modernization (change in process or technology) with increase in production capacity or any change in product mix beyond the list of products cleared in the issued clearance is required to submit new application for EIA clearance.

Any developmental activity, which is listed in Schedule of the EIA Notification and due to expansion of its total capacity, if falls under the purview of either Category B or Category A, then such developmental activity requires clearance from respective authorities."

46. The bare reading of the above shows that establishment, expansion and even modernisation of CETPs require EC, being a category B project. Any treatment plant that deals with such effluents having more than 10% of industrial contributions by volume has to be treated as a combined treatment plant. On the strength of this guide, it becomes clear that the material consideration for determining the nature of the project or activity is the kind of effluent that it receives for the purpose of treatment. There is nothing on record before us to show that the STP in question is so established as to treat exclusively sewage and nothing else. On the contrary, the sketch filed by the respondent (Annexure R. 3) shows that the sewage is carried by an open drain and would be so carried to the site of STP (for treatment). It is just by the side of a metal road and travels through the *abadi* and the sludge is carried through an open drain from the entire city. This is demonstrable of the fact that it is not sewage *per se* that is taken by the open drain to the site but is a mixture of various distinct effluents. Thus, such an STP would even fall under the entry 7(h) because this plant would be treating the effluents in the semi-solid form and even sludge and would contain more than 10% of industrial or other contaminated chemical effluents. Such a plant is not only treating the effluents/sewage but also has to ensure that the ultimate discharge from such plant is strictly within the parameters prescribed so that the waste water is capable of being used for irrigation or recycled for other purposes while the other waste/sludge is to be properly disposed of. This is where the respondent has failed to place scientific data on record to show that it is exclusively the sewage which is capable of being treated to bring the ultimate discharge within the prescribed parameters of Biochemical Oxygen Demand (BOD) and others and also to ensure its proper re-use or recycling. We can reasonably conclude that the open *nallah* does not carry only the sewage waste but other effluents as well which are required to be treated by a CETP and the capability of the STP requires scientific and appropriate scrutiny from an expert body before it can be permitted to become operational and it is a fit case where it would cover combined waste water treatment plant i.e. CETP excepting sewage along with industrial effluents.

47. The above deliberations now bring us to another important facet of the present

case as to the necessity for such a plant to obtain EC under the Notification of 2006. The very purpose of setting up an STP is to attain betterment in the field of environment. Under this project, it is expected to bring the entire sewage for treatment to the plant and then to ensure that the end products from such treatment are in conformity with the prescribed parameters and the water in relation to the sludge and the water content both. The water should be capable of being recycled for irrigation and other allied purposes. This object would stand frustrated if the sewage is containing other contaminated effluents i.e. trade effluents, industrial effluents and other domestic discharge containing high pollutants. Then the end result would be that even if the sewage is treated, still the ultimate product being discharged from the plant would remain contaminated, acidic or unusable for different purposes. On account of the experience gained and on account of improvements in the field of science, it is now possible to anticipate as to what ought to be a broad activity of the project. The authorities should be able to take scientific view at the initial stages of installation of an STP. The expert bodies like SEIAA and EAC would, at the stage of scoping and appraisal contemplated in terms of the Notification of 2006, be able to take an objective and rational view in regard to establishment and operation of the STP simplicitor or requirement of any additional anti-pollution measures to be taken by the project proponent in the interest of environment and public health. It is the stage whether they should proceed with the project or the project needs other supplementary treatment plants to ensure adherence to prescribed standards. They can have a comparative study of the harmful effects of the project, considering it on the touchstone of sustainable development and human environment and welfare. Sewage itself is a very serious pollutant. It can result in tremendous health hazards and cause injury to the environment including intolerable odour. It carries pathogenic organisms that can transmit diseases to humans and animals, hold nutrients that may cause eutrophication of receiving water bodies and can lead to eco toxicity. The purpose of the environmental legislations referred to in the NGT Act is to prevent environmental degradation on the one hand and its improvement on the other. To perform these functions collectively and effectively, it would be necessary for such projects to get EC at the very threshold. It would help to further the cause of the legislations as well as the larger public purpose. On the contrary, it may prove to be a futile exercise if the plant is established and still it is unable to treat the mixed waste of different components which comes from the drain to the site of the plant. At the present stage, it may be a remedial measure but later on it may prove to be a disaster and a complete waste of public money.

48. For the reasons afore-recorded, we answer both the questions in favour of the applicant and against the respondent. While allowing the application, we direct the respondent to seek EC from SEIAA at the earliest and in any case not later than one month from today. We further direct SEIAA to process the application and complete the entire exercise of granting clearance-conditional or otherwise-or refusing the same within two months thereafter. In the circumstances of the case, we would not direct removal of the plant to the extent to which it has already been constructed at the site as all acts done so far and that may be done hereafter would be subject to the grant of EC to the project in question by the competent authority.

49. In the facts and circumstances of the case, there shall be no order as to costs.

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**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 936 of 2021

[Arising out of Order dated 08.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench V, in Company Application No. 878/ND/2020]

IN THE MATTER OF:

**M/s. Essjay Ericsson Private Limited
Through its Authorised Representative
Sh. B.K. Garg,
S-18E, School Block Shakarpur
Delhi-110092**

...Appellant

Versus

**M/s. Frontline (NCR) Business Solutions Pvt. Ltd.
B-48, Ground Floor, Naraina Industrial Area,
Phase-II, New Delhi- 110028**

...Respondent

Present:

For Appellant: Mr. Partho Bhattacharya and Mr. Anand Kumar Singh, Advocates.

For Respondent: Mr. Rajeev Narayan, Advocate.

**ORDER
(10th January, 2022)**

Ashok Bhushan, J.

1. This Appeal has been filed against the judgment and order dated 08.06.2021 in Company Application No. 878/ND/2020 passed by the by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench V, by which Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) by the Appellant has been rejected.

2. Learned Counsel for the Respondent at very outset contended that this Appeal is barred by time and should be rejected on the ground of delay. No Application for condonation of delay has been filed by the Appellant. Learned Counsel submitted that the impugned judgment was passed on 08.06.2021 and this Appeal has been filed on 02.09.2021 i.e. much after expiry of limitation for filing an Appeal.

3. Learned Counsel for the Appellant refuting the submission of the Learned Counsel for the Respondent submits that the present Appeal is not barred by time. He submits that in view of the judgment of the Hon'ble Supreme Court passed in *Suo Motu Writ Petition No. 3 of 2020* dated 23.09.2021, the Appellant is entitled to claim extension for the limitation till 02.10.2021. The Appeal having been filed before that the same is not barred by time.

4. Learned Counsel for the Respondent elaborating his submissions contends that judgment of the Hon'ble Supreme Court in *Suo Motu Writ Petition No. 3 of 2020* shall not be treated as automatic extension of limitation. An Applicant seeking benefit of limitation as provided in the judgment of the Hon'ble Supreme Court has to file an Application under Section 5 of the Limitation Act, 1963 and satisfy the Court that there was sufficient ground for condonation of delay.

5. Learned Counsel for the Appellant has placed reliance on judgment of the Delhi High Court in the matter of ***“Bharat Kalra vs. Raj Kishan Chabra-***

CM (M) 429/2021” decided on 12.08.2021. Learned Counsel has also placed reliance on the judgment of the Hon’ble Supreme Court in **“Sagufa Ahmed and Ors. vs. Upper Assam Polywood Products Pvt. Ltd. & Ors.- (2021) 2 SCC 317”**.

6. We have considered the submissions of the Learned Counsel for the parties and perused the record.

7. From the submissions of the Learned Counsel for the parties, following two issues arise for consideration: -

- (i) Whether judgment and order of the Hon’ble Supreme Court passed in *Suo Motu Writ Petition No. 3 of 2020* shall operate as automatic extension of the limitation?
- (ii) Whether for taking benefit of judgment of the Hon’ble Supreme Court passed in *Suo Motu Writ Petition No. 3 of 2020*, an Applicant has to file an Application for condonation under Section 5 of the Limitation Act, 1963 and satisfy the Court/Tribunal that sufficient cause has been made out for condonation of delay?

ISSUE NOS.(1) and (2):-

8. We may first notice the judgment of the Hon’ble Supreme Court passed in *Suo Motu Writ Petition No. 3 of 2020* to find out the purport and effect of the judgment. The first order passed by the Hon’ble Supreme Court was order dated 23.03.2020. By order dated 23.03.2020, following was directed:-

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.”

9. Subsequently, in the same proceeding, Suo Motu Writ Petition was disposed of by subsequent judgment dated 08.03.2021. Further directions were issued in paragraph 2:-

“2. We have considered the suggestions of the learned Attorney General for India regarding the

future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

10. Miscellaneous Application No. 665 of 2021 was filed in SMW (C)No. 3 of 2020 which was also disposed of by the Hon'ble Supreme Court vide its order dated 23.09.2021 by direction issued in paragraph 8, which is to the following effect:-

“8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions: -

- I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.*
- II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.*
- III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996,*

Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

- IV. *The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."*

11. When we peruse all the above orders, it is clear that what was directed by the Hon'ble Supreme Court was extension of period of limitation prescribed in general law and special law and the order was passed by the Hon'ble Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution of India. In the order dated 23.09.2021, the Hon'ble Supreme Court while referring to its earlier order dated 23.03.2020 has stated that ***"this Court directed extension of the period of limitation in all proceedings before the Courts/ Tribunals including this Court w.e.f. 15.03.2020 till further orders"***. Paragraph 1 of the order is as follows:-

“1. Due to the outbreak of COVID-19 pandemic in March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State). On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders.”

12. When the Hon’ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon’ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed during the relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon’ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal. However, if a litigant being over cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that

proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.

13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise.

14. We may now notice two judgments relied by the Learned Counsel for the Respondent in support of his submissions.

15. Learned Counsel for the Respondent has firstly relied on the judgment of the Hon'ble Supreme Court in **"Sagufa Ahmed and Ors."**. Learned Counsel has relied on paragraphs 19 and 23 of the judgment which is to the following effect:-

"19. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is

needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

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23. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the prescribed period, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.

16. The observations of the Hon’ble Supreme Court in paragraph 19 is that what was extended by the order of Hon’ble Supreme Court was the period of limitation and not the period for which the delay can be condoned in exercise of discretion conferred by the statute. The said observation fully supports the view which we are expressing regarding the effect of order of the Hon’ble Supreme Court passed in Suo Motu Writ Petition No. 3 of 2020. In a case where excluding the period of extension of limitation, there is still some delay in filing an application or appeal, it is always open for the Applicant/Appellant to file an Application seeking condonation of delay which has to be decided in discretion of the Court or Tribunal. Further in paragraph 23, the Hon’ble Supreme Court held that “Any period beyond the **prescribed period**, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”. Thus,

prescribed period of limitation is only the period of limitation as provided under special and general law and extended by the Hon'ble Supreme Court by order passed in *Suo Motu Writ Petition No. 3 of 2020*. Any period beyond the said period rightly cannot be held to be prescribed period and for the period which is beyond the above extended period of limitation a sufficient cause has to be made out for a litigant to avail the benefit of Section 5 of the Limitation Act. Judgment of the Hon'ble Supreme Court in ***"Sagufa Ahmed and Ors."*** (supra) in no manner support the submissions of the Learned Counsel for the Respondent.

17. Learned Counsel for the Respondent has heavily relied on the Delhi High Court judgment in CM(M) 429/2021 in ***"Bharat Kalra"*** (supra). Delhi High Court was considering a case where delay in filing written statement was not condoned by the Trial Court against which the Defendant had filed the petition. Before the High Court, reliance on the order of the Hon'ble Supreme Court in *Suo Motu Writ Petition* was claimed by the Petitioner. Delhi High Court has noted the orders passed by the Hon'ble Supreme Court on 23.03.2020 and 08.03.2021 in paragraphs 10 and 11. It may also be relevant to notice that summons was served on the Defendant on 11.01.2020 and he did not file the written statement until 20.08.2020. An Application was filed seeking condonation of delay in filing the written statement. Defendant had prayed for condonation of delay in filing the written statement which was rejected and petition was filed in the High Court. In the above reference, observation has been made by the Delhi High Court in paragraphs 13 and 15 which are to the following effect:-

“13. While it is true that the power to condone delay is intended to advance substantive justice, nevertheless, procedure cannot be given a complete go by. The powers of the court to condone delay is to be used in appropriate cases. No litigant can assume that, as a matter of right, the delay in taking steps would be condoned, because procedure is the handmaiden of substantive justice. Rights accruing to the opposite party on account of the delayed action need to be also kept in mind. The reasons given for explaining the delay are of paramount importance and not the length of the delay. The shortness of delay alone ought not to suffice for exercise of discretion to condone it. Cogent and clear explanations have led the courts to condone the delay, even of five years in filing the pleadings.

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15. It was thus made clear that the benefit of the order dated 23rd March, 2020 would be available only to those who were vigilant of their rights and not lethargic. There is also nothing in the orders of the Supreme Court that suggests that when an action has not been taken within the prescribed period of limitation, the merits of the application for condonation of delay need not be looked into and the same is to be allowed automatically. Only where the limitation has expired during the lockdown and even the extended period, which can be allowed in the discretion of the court, also expired in the lockdown period, a party can claim that no delay has occurred

as the Supreme Court had enlarged limitation periods prescribed.”

18. The observations made by the Delhi High Court have to be confined to the delay which was caused by a litigant before order in Suo Motu Writ Petition No. 3 of 2020 was passed i.e. before 15.03.2020 from which date period of limitation was extended. Admittedly, there was delay in filing written statement in the above case which period had expired before 15.03.2021 hence, observations in paragraph 13 and 15 has to be confined to that period. In event, it is accepted that even for the period after 15.03.2020, a litigant has to file an Application for condonation of delay showing sufficient cause for period which was covered within extended limitation granted by the Hon’ble Supreme Court, the same order will be contrary to plain reading of the Hon’ble Supreme Court judgment in Suo Motu Writ Petition No. 3 of 2020 passed on 23.03.2020, 08.03.2021 and 23.09.2021.

19. We, thus, are of the view that observations of the Delhi High Court in paragraphs 13 and 15 which are relied by the Counsel for the Respondent for contending that the Appellant before us has to file an Application under Section 5 of the Limitation Act and it is the discretion of the Court/ Tribunal to condone the delay or not, cannot be accepted. When the limitation has extended by the Hon’ble Supreme Court in the orders noted above, for a period covering extension of limitation neither application is required nor there is any discretion of Court or Tribunal to consider sufficiency of delay. We are of the view that unless the observations of the Delhi High Court in paragraphs 13 and 15 are not read to be with regard to period not covered by Hon’ble

Supreme Court Judgment, the said observations shall be clearly in conflict with direction of the Hon'ble Supreme Court and cannot be held to be correct law.

20. We may also refer to judgment of the Kerala High Court where Suo Motu judgment passed by the Hon'ble Supreme Court in Writ Petition No. 3 of 2020 came for consideration. Kerala High Court also took the view that in case appeal or application is filed within the period of limitation as extended by the Hon'ble Supreme Court, there is no occasion to file application for condonation of delay under Section 5 of the Limitation Act. In R.C. Rev. No. 144 of 2021- ***"K. Sulaiman vs. K.P. Nafeesa and Ors."*** decided on 18.11.2021, following was held in paragraphs 7 and 8:-

"7. In Re: Cognizance for Extension of Limitation [2021 (5) KHC 508] a Three-Judge Bench of the Apex Court held that in computing the period of limitation for any suit, appeal, application or proceedings, the period from 15.03.2020 till 12.10.2021 shall stand excluded.

8. In view of the aforesaid decision of the Apex Court, there is no necessity for the tenant to file an application for condonation of delay along with R.C.A. No. 99 of 2020, since the said appeal can be treated as one filed before the Rent Control Appellate Authority, Kozhikode, within the period of limitation."

21. In the present case, the impugned judgment passed on 08.06.2021 and Appeal having been filed on 02.09.2021, both dates being fully covered within

the order dated 08.03.2021 and last order dated 23.09.2021, there was no requirement of filing an Application for condonation of delay by the Appellant and the Appeal cannot be held to be barred by time. We, thus, overrule the objection raised by the Counsel for the Respondent and hold the Appeal to be within time.

22. Let the Appeal be listed 'For Admission' on **17.01.2022**.

[Justice Ashok Bhushan]
Chairperson

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

New Delhi
Anjali


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