

Item No. 04

Court No. 1

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

Appeal No. 54/2018
(M.A. No.541/2018, I.A. No.140/2019,
I.A. No.352/2019 & I.A. 54/2020)

H. P. Ranjanna

Appellant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 03.02.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Appellant (s):

Mr. Rahul Choudhary and Mr. Sharon Mathew,
Advocate

For Respondent(s):

Mr. V. D'Costa and Mr. Himanshu Sharma, Advocate
for R-11 & 12
Ms. Amrita Sharma, Advocate for BBMP

ORDER

1. This appeal has been preferred against order dated 10.01.2018 of the State Environment Impact Assessment Authority (SEIAA), Karnataka, granting Environmental Clearance (EC) for construction of New High Rise Residential Building Project at Survey Nos. 61/2, 62 and 63/2, Kasavanahalli village, Varthur Hobli, Bengaluru East Taluk, Bengaluru District by M/s Wonder Projects Developments Pvt. Ltd. Construction is proposed on a plot area of 50,382.91 sq.m. with total built up area 1,28,193.9 sq.m. The project will consist of two residential block having, two basements plus ground floor plus upper floors with 655 units. Total parking space proposed is for 877 Nos. of

Cars (site plan/ layout drawing). Total water consumption is 534 KLD. It is proposed to construct two sewage treatment plants with a capacity of 210 KLD and 280 KLD.

2. Grievance against the above EC is that the construction is in the buffer zone of the Kaikondarahalli Lake, apart from one primary and two secondary Rajulewas. The area is eco-fragile and environmental load by the project would be much more than carrying capacity of the area. The project proponent deliberately concealed relevant data. The project is in No Development Zone, being Buffer Zone of the lake. It was wrongly mentioned that the site was suitable for the Project. The source of water has not been correctly mentioned. EC is in violation of the Wetland (Conservation and Management) Rules, 2017. It is also in violation of the Municipal Law, including the Master Plan of the City of the Bengaluru.
3. On 13.04.2018, notice was issued. Vide order dated 01.10.2018, delay in filing the appeal was condoned and parties were permitted to file their pleadings. On 08.07.2019, the matter was directed to be put for consideration with O.A. No. 281/2019 which is with reference to the present project as well as some other project.
4. We may now refer to the response of the opposite parties in their pleadings. The stand of the Bruhat Bengaluru Mahangara Palike (BBMP) in its reply filed on 05.09.2019 is that the project is illegal. It has issued stop work notice to the project proponent on 13.07.2018 on account of violation of the Zoning Regulation No. 4.12.1 (ii) of the Revised Master Plan – 2015 which prescribes a buffer of No

Development Zone of 30 meters around the lake. Relevant averments in the reply of BBMP are:-

“7. It is humbly submitted that the project lands are in fact Wetlands and it is situated abutting the Kaikondarahalli Lake. The project lands fall inside/within the two kinds of buffer zones defined in the Judgment (04.05.2016, Forward Foundation's case), namely, The Lake Buffer zone limits (75 meters from the periphery of the lake) and Nalla/Rajakaluve Buffer zone limits (35 meters) on either sides from the edges of the Nalla/Rajakaluve. Both these buffer zone limits are prohibited areas in terms of the judgment in Forward Foundation's case supra and directions issued therein (at Direction No.3 stated above) that no permissions for the purposes of sanctioning any construction project can be granted by any authority for any construction project, including the project in question namely, GODREJ REFLECTIONS.

8. As regards the prayer in the above case that directions to Respondent authorities including BBMP to strictly enforce the judgment of the NGT in Forward Foundation's case is concerned. In the humble submission of the Respondent No.5, this Hon'ble Tribunal in the said case has passed various directions for protection of environment and ecology for the city of Bengaluru and has made several observations regarding the environment situation in Bengaluru and regarding the water scarcity in Bengaluru. Forward Foundation's case in Original Application No.222 of 2014 was disposed of by its main judgment dated 07.05.2015. While doing so at Para No.85 therein various directions were issued and a High Power Committee was constituted and to submit a report to the Tribunal. BBMP was one of the members of High Power Committee.

Subsequently, pursuant to the High Power Committee's report this Hon'ble Tribunal passed another judgment dated 04.05.2016 and has therein issued three types of directions: (1) General Conditions or Directions; (2) Specific Conditions/Directions for Respondent No.9; and (3) General Directions.

The third direction at Para no. 63 is already stated above and it is applicable for the above case.

9. It is humbly submitted that in the above said judgment dated 07.05.2015 in Forward Foundation's case, it is clearly stated regarding Wetlands as under:

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

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

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

59. Bengaluru has many artificial lakes, built for various hydrological purposes and mainly to serve the

needs of irrigated agriculture and other allied purposes. The studies placed on record show that lakes of Bengaluru occupy about 4.8 per cent of the city's geographical area (640 square meters) covering both urban and non-urban areas (Krishna M.B. et al., 1996). The number of these lakes has rapidly fallen from 262 in 1960 to 81 in 1985. The quality of water has reduced due to discharge of industrial effluents and domestic sewage. Conversion of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Similarly, between 1973 and 2007, this region lost 66 lakes with a water spread area of around 1100 hectares due to urban sprawl (Nitin Bassiet al.,

2014). General factors affecting wetlands especially lakes are Eutrophication, low dissolved oxygen and pH, sedimentation and heavy metal pollution, biodiversity loss, etc.

60. Studies also reflect that a comparative analysis of drainage network between the

Bengaluru urban and rural areas showed that the water bodies in Bengaluru urban district were subjected to intense pressure due to the process of urbanization and increasing population, resulting in loss of interconnectivity, in contrast to water bodies in rural Bangalore, where less pressures from direct human activities were noticed. At Madivala and Bellandur, there is interconnectivity of lakes with the adjacent lakes. Due to conversion and encroachment of two water bodies, connectivity between Yelchenahallikere and Madivala is lost as in the case of Bellandur and Ulsoor lakes with the conversion of Challegatta tank into a golf course. The GIS analysis revealed that due to developmental activities in the catchment area, the drainage connectivity between the water bodies has been lost.

61. The loss in wetland interconnectivity in Bangalore district is attributed to the enormous increase in population and the reclamation of tanks for various developmental activities

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.

67 It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. **Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters. The Supreme Court of India, in Civil Appeal No. 1132/2011 while expressing concern regarding encroachment, particularly over lakes, had directed the State Governments to remove encroachments on all community lands.**

67 **Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow** leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

1. Encroachment of lakebed, flood plains, and lake itself;
2. **Encroachment of rajakaluves/storm water drains and loss of interconnectivity;**
3. Lake reclamation for infrastructure activities;

4. Topography alterations in Lake Catchment;

5. Unauthorized dumping of municipal solid waste and building debris;

6. Sustained inflow of untreated or partially treated sewage and industrial effluents;

7. Removal of shoreline riparian vegetation;

8. Pollution due to enhanced vehicular traffic.

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

10. It is humbly submitted that this Hon'ble Tribunal has also clearly stated regarding the trifecta namely, Wetlands, zone of influence/catchment area and water bodies/lakes in the case of *Diwan Singh & Another vs Union of India & Others* (Larger Bench ruling) in Original Application No. 299 of 2016, the relevant para's is reproduced as under:

"15. Water bodies and wetlands play an extremely crucial role in ground water recharge, maintenance of aquatic biodiversity, provide habitat for avifauna as

well as aquatic life, help regulate temperature and humidity in the locality, and thereby ameliorate the severity of extreme temperature and also provide drinking water during critical months to the wild life. Besides, a water body receives the surplus run off, subsurface and **base flow from the adjoining catchment area** during the monsoons and helps in the recharge of aquifers, thereby providing a dynamic equilibrium with the catchment as well as the aquifers underneath. Protection of water bodies is, therefore, critical to the associated aquatic and terrestrial ecosystem of the area. However, the capacity of the water bodies can be severely impacted adversely in the absence of a proper vegetative cover, unregulated flow of domestic sewage and industrial effluent into the water body or dumping of municipal waste which some of the water bodies

"18. The Apex Court has held that the government is duty bound to clean and develop ponds which were drying up, so that ecological disaster may be prevented and better environment provided to people at large in the matter of **Hinch Lal Tiwari V. Kamala Devi [(2001) 6 SCC 496]**. Relevant portion is reproduced as follows :

"It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc., are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e., Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large"

The emphasis of the above enunciated law is that all the concerned authorities should exercise their powers within the framework of law to protect forests, lakes, rivers and wildlife. The failure on the part of the Authorities to do so causes a dual damage. Firstly, the loss of water bodies and secondly, unauthorized or impermissible development activity on the wetland. Both of them cumulatively have serious adverse impacts on environment and ecology."

11. In fact the project lands/wetlands are situated in the catchment areas of Bellandur and/or Varthur lakes and particularly abutting the Kaikondarahalli lake. The Project

Proponents i.e. M/s Wonder Project Development Pvt. Ltd. have submitted an application on **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/impugned project) from the BBMP in Application No. **BBMP/Add.Dir/JD/NORTH/0202/2017-18** in respect of the lands in BBMP Khata No.4131, Survey No.61/2, 62, 63/2 totally measuring 12 acres 18 guntas situated in Kasavanahalli, Varthur Hobli Bangalore East Taluk, BBMP Ward No.150 (Bellandur Ward), Mahadevpura Zone, Bangalore.

12. For the purpose of launching this project, the Project Proponents have resorted to various illegalities. In fact, the Project Proponents had widely issued full page public advertisements in leading English daily newspapers (including the advertisement copy produced at page no.8 of MA No.541/2018 in the above case), advertising for the project and in continuation of the same the Project Proponents have in fact illegally and unauthorizedly raised constructions of model flat comprising of ground floor and first floor measuring 2500 square feet and there was on-going constructions, therefore, BBMP issued Show Cause Notice-cum-Stop Work Notice dated 13.07.2018 as stated above.

In fact the construction of Model Flat measuring 2500 sq.ft. was raised even in the absence of Mandatory written permission from the BBMP for the purpose of putting up any construction in the project lands and in the absence of approved Building Plan and Building License which is a condition precedent. In fact, there is clear violation of Section 300 of KMC Act, 1976. Therefore, the said constructions in the project lands are completely illegal and unauthorised. Section 300 of the KMC Act, 1976 is as under:

"300. Prohibition against commencement of work without permission.- The construction or re-construction of a building shall not be begun unless and until the Commissioner has granted permission for the execution of the work."

In this context, it is relevant to mention that this Hon'ble Tribunal in Forward Foundation's case (4.5.2016) at Para 34 has defined the meaning of construction and it is reproduced as under:

"34. Construction does not mean construction of only the building. Construction envisages different processes starting from clearing the land, excavating the land for the foundation, building the foundation and the work till the entire construction is completed"

In this background, Condition Nos. 45 and 46 of the Environment Clearance are relevant and are reproduced as under:

"45. The proponent shall take up the construction activity only after obtaining NOC from BWS&SB or clearance from the competent authority for assured supply of water as the case may be.

46. The Project proponent shall ensure that the construction activity is undertaken strictly in accordance with the approved site plan/layout drawing annexed to this Environmental Clearance letter. However, it is subject to compliance to the provisions of local authorities regarding setbacks, FAR etc., shall be adhered to."

13. Therefore, BBMP has issued necessary orders to remove the illegal and unauthorized structures and has therefore issued Provisional Orders (PO) under section 321(1) & (2) of the KMC Act, 1976 dated **06.06.2018** and followed by Confirmation Order (CO) under section 321(3) of KMC Act, 1976 dated **22.06.2018**. The photographs at page No.60 of the Rejoinder Affidavit filed by the Appellant on **22.05.2018** is the very same illegal constructions raised in the project lands for which BBMP has issued the above said orders to remove the unauthorized constructions.

14. In fact, the application dated 17.11.2017 submitted by Project Proponents, seeking sanction of building plan and building license is invalid and is not according to the mandatory requirements under the KMC Act and BBMP Building Bye-laws, 2003. Building bye-law no.3.2 is 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, BESCO, 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."

The mandatory requirements at Serial Nos.3 and 10 is not complied with by the Project Proponents, despite the Show Cause Notice-cum-Stop Work Notice dated **13.07.2018** wherein the BBMP has requested the Project Proponents to produce documents stated in para no.19 of the said Notice. However, the Project Proponents have till today not furnished these required documents. BBMP at Para no.19 has specifically sought for the mandatory permission "Consent to Establish (CFE) from Karnataka State Pollution Control Board for the project in question; and No Objection Certificate (NOC) from the BWSSB for the project in question."

PROJECT PROPONENTS HAVE NOT OBTAINED THE MANDATORY CONSENT REQUIRED UNDER SECTION 25 OF THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974.

15. In this context, the material on record itself discloses that Annexure R-4 produced by the Project Proponents in their reply to the Appeal dated **19.5.2018** clearly discloses that the very application form seeking the mandatory consent to establish the project u/s 25 of the Water (Prevention and Control of Pollution) Act, 1974 for establishing the project and seeking mandatory consent for the period from 2018 was submitted only on **10.01.2018**. This, itself clearly shows that the application seeking building plan and building licenses were not in accordance with the mandatory requirements under BBMP by-law no.3.2 and Sections 299, 304 and 312 of the KMC Act. Moreover, it is mandatory to first obtain the consent to establish the project as it is clearly stated by the Hon'ble Supreme Court of India at Paragraph No.50 in the case of Anirudh Kumar vs Municipal Corporation of Delhi & Ors, 2015 (7) SCC 779.

Therefore, it was incumbent on the Project Proponents first to obtain the consent to establish the project and thereafter to proceed with further stages of obtaining the building plan and building license. But the Project Proponents without complying with Section 25 of the Water Act, 1974 i.e. by not obtaining the mandatory consent to establish the project and without obtaining

the building plan and building license from the BBMP have illegally constructed the model flat for launching the project with wide public advertisements. Since BBMP has issued demolition orders and Show Cause Noticecum-Stop Work Notice, however, the Project Proponents have falsely stated and mis-represented that they have not raised any constructions.

Apart from all this, the project site discloses the illegal construction activity at the far end (on the Eastern side) of the project and that 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 the Kaikondarahalli lake and in other parts of the project site.

16. Insofar as the other permission from, the Respondent No.9-Water Supply and Sewage Board/BWSSB is concerned, the water Board has in its letter dated 23.09.2017 addressed to the Project Proponents in respect of the project lands regarding the request for issuance of the statutorily required permission/No Objection Certificate/NOC, have stated as under:

"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

17. In this regard, based on the drawings submitted to the BBMP by the Project Proponents for the purpose of sanction of building plan and building license indicates that the proposed constructions of two blocks of residential apartment buildings i.e. Block No.1 (**63.60 mtrs in height**) is at the end of the project lands, while Block No.2 is at the entrance of the project lands. In this background the Zoning Regulation No.3.12 framed under the provisions of Karnataka Town and Country Planning Act, 1961 is applicable to the project and the application seeking building plan and building license. Zoning Regulation No. 3.12 is reproduced 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”

It is therefore clear that there is non-compliance of the above said Zoning Regulation No.3.12 because the height of the proposed building is clearly above 24 meters, the requirement of clearance/consent/NOC from Pollution Control Board is mandatorily required and the Project proponents have not complied with the said requirement for the purpose of sanction of building plan and building license.

VIOLATION OF ZONING REGULATIONS AND/OR BUFFER ZONE VIOLATIONS

18. It is humbly submitted that as already stated above the project lands being wetlands and abutting Kaikondarhalli Lake and is in the catchment area of BellandurLake and/or VarthurLake and that the nalla/rajalalweand lake buffer zones stipulated in the zoning regulations as well as the buffer zones defined in the Forward Foundation's case supra (4.5.2016) are applicable.

In this context Zoning Regulation No.4.12.1(ii) — Valley/Drain is as under:

"ii) Valley/ drain

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

- i. Sewerage Treatment Plants and Water treatment plant.*
- 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 RMP2015. 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."

Having regard to the fact BBMP has already initiated action vide Stop work notice stated supra, at this juncture it is relevant to state the Judgment of this Hon'ble Tribunal in the matter of Ramesh Chandvs State of H.Pand Others, reported in **2018 NGTR(1) PB147**, Para 10 is reproduced as under:

"10. Once the provision of the Town and Country Planning Act, 1977 (hereinafter referred as 'Act') are made applicable and in furtherance thereto the Development Plan becomes operative. It is mandatory for any person to raise constructions strictly in accordance with the Plan and subject to the Development Plan being sanctioned by the Competent Authority. **The competent Authority is under statutory obligation to take into consideration the various stated factors before it sanction the plans. The Plans must and ought not to be sanctioned in a routine or in a casual manner without taking into consideration the environmental impacts assessment thereof in accordance with law**

19. It is humbly submitted that the project proponent had submitted to the BBMP the Development Plan (DP) issued by the BDA dated 5.3.2015 i.e. permission for scheme of development of the project (not permission for construction of building) and by relying upon the said DP, the project proponent has sought for building plan and building license from the BBMP. Further, in view of the above stated DP issued by BDA it clearly discloses that there is nalla passing through the adjacent land in Survey No.57 and that 25 meters buffer line indicated to the extent of the said buffer line that falls inside the project land. However, inside this 25 meter buffer line/zone which is a prohibited area, permissions for proposed development of 12 meters wide drive way and installation of gas bank/infrastructure for LPG piped line is approved.

In fact, the above said drive way of 12 meters continues and passes through primary nallaas can be seen in the DP and that the various portions of the said 25 meters wide drive way falls inside the 50 meter buffer line on both sides of the 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. In so far as 70 meters lake buffer zone is concerned, which 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 No.1 and Block No.2.

20. Similarly, the permission/DP also indicated another nallah in Survey No.61/1 which is adjacent to Survey No.61/2 and that 25 mtr buffer zone is indicated. However, inside this 25 meter 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 is approved and on the basis of such a permission/DP approval for building plan and building license from the BBMP is sought for. Because BBMP cannot issue any permission including building plan and building license, contrary to the directions issued by the NGT in Forward Foundation's case, judgment dated 4.5.2016 in OA No.222/2014 which already stated above.

ALTERED PROJECT AND LACK OF FRESH ENVIRONMENTAL CLEARANCE AND ITS NEXUS FOR SEEKING PERMISISSONSFROM BBMP

21. In addition to the permission/development plan being contrary to the directions issued by the Full Bench of this Hon'ble Tribunal in Forward Foundation's case supra, the said development plan permitting the scheme of development for the entire project is far greater than the extent for which Environment Clearance is obtained and this is explained hereinbelow. The impugned EC dated 10.1.2018 for the construction project is for a total built up area of 1,28,193.9 Square Meters.

In this background reference can usefully be made to the latest decision of the Hon'ble Supreme Court of India in the matter of M/s Goel Ganga Developers Pvt. Ltd. vs. Union of India in **Civil Appeal No.10854 of 2016** and connected matters decided on **10.08.2018** has clearly held at Para 14 as under:

"14. Indeed, 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 11**

(Emphasis supplied)

22. Applying the above said legal position to the facts of the case on hand it will clearly demonstrate that in view of the said permission namely development plan (DP) issued by Respondent No.4- BDA permitting a scheme of development is as a result of altered project with change in the scope and configuration which is different from the project conceived by the project proponent in terms of the impugned EC dated 10.1.2018. 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 of floors	2 basement floors + GF+20 upper floors	2 basement floors+GF+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 Development Plan minus area approved in the impugned EC: 235076.81-		

128193.9=106882.91 sqm.

It is therefore clear that there is apparent violation of Condition No.46 of the Environment Clearance on the one hand, wherein Condition No.46 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 is at Page No.57/Annexure-A-3), while on the other hand based on the altered project as explained above permissions/development plan is obtained even without Environment Clearance for such an altered project of change in the scope and configuration of the project. Furthermore, there is apparent violation of Condition No.5 of the General Conditions of the EC and consequently condition No.6 is also relevant. In this background, **Condition No.5 and 6 of the General Condition of EC** is reproduced as under:

"5. In case of **any change(s)** in the scope of the project, the project proponent **would require a fresh appraisal** by its Authority."

"6. Concealing factual data or submission of false/fabricated data and failure to comply with any of the conditions mentioned above may result in withdrawal of this clearance and attract action under the provisions of Environmental (Protections) Act, 1986."

23. Therefore, under these circumstances also and on the basis of such permission/DP, BBMP has not granted any sanction of building plan and building license and on account of all above mentioned contraventions and non-compliances of provisions of Zoning Regulations, RMP-2015, Karnataka Town and Country Planning Act, 1961 and directions issued in Forward Foundation's case supra BBMP has already issued the aforesaid 'Stop work notice cum show cause notice' dated **13.7.2018**.

24. Therefore, under these facts and circumstances the application dated 17.11.2017 for sanction of building plan and building license is contrary to the Supreme Court decision passed in the case of Ritesh Tewari & another V/s. State of UP and others at Para nos.32to 34, (2010) 10 SCC677. The relevant paragraphs are reproduced as under:

"32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. **It would be beyond the competence of any authority to validate such an order.** It would be ironical to permit & person to rely upon a law, in violation of which he has obtained the benefits

33. In *C. Albert Morris v. K. Chandrasekaranand Ors.* (2006) 1 SCC228, this Court held that **a right in law exists only and only when it has a lawful origin.**

34. In *Mangal Prasad Tamoli (dead) by L.Rs.v. Narvadeshwar Mishra(dead) by L.Rs. and Ors.* (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside."

VIOLATIONS OF THE PROVISIONS OF THE KARNATAKA MUNICIPAL CORPORATIONS ACT, 1976 (KMC ACT)

25. In view of the Zoning Regulations violations/Buffer Zone violations and consequently non-compliance of the provisions of the Karnataka Town and Country Planning Act, 1961, there is violation of Section 505(ii) of the KMC Act, 1976. Section 505 of the KMC Act is reproduced below:

"505. Exercise of powers by a corporation to be in conformity with the provisions of the Karnataka Town and Country Planning Act, 1961.-

Notwithstanding anything contained in this Act, a corporation or any officer or other authority required by or under this Act to exercise any power, or perform any function or discharge any duty,-

(i) with regard to any matter relating to land use or development as defined in the Explanation to section 14 of the Karnataka Town and Country Planning Act, 1961, shall exercise such power, or perform such function or discharge such duty with regard to such land use or development plan or where there is no development plan, with the concurrence of the Planning Authority;

(ii) **shall not grant any permission, approval or sanction required by or under this Act to any person if it relates to any matter in respect of which compliance with the provisions of the Karnataka Town and Country Planning Act, 1961 is necessary** unless evidence in support of having complied with the provisions of the said Act is produced by such person to the satisfaction of the corporation or the officer or other authority, as the case may be."

It is clear that because of the above said non compliances and violations, BBMP has not issued building plan and building license on the basis of any type of permission(s) that are in violation of Zoning Regulations i.e. Regulation No.4.12.1 (ii) and Revised Master Plan-2015 (RMP) framed under the provisions of Karnataka Town and Country Planning Act, 1961. Cumulatively, there is non-compliance of provisions of Karnataka Town and Country Planning Act, 1961. Hence there is violation of Section 505 (ii) of KMC Act, 1976.

APPLICATION SEEKING BUILDING PLAN AND BUILDING LICENSE PURSUANT TO THE IMPUGNED ENVIRONMENT CLEARANCE AND VARIOUS VIOLATIONS OF THE CONDITIONS OF THE EC

26. It is humbly submitted that, in this context the specific conditions of construction phase i.e. Condition Nos,42, 46, 47, 48 and 49 of the Environmental Clearance (EC) is application and are reproduced as under:

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

45. The Proponent shall take up the construction activity only after obtaining NOC from BWS&SBor clearance from the competent authority for assured supply of water as the case may be.

46. The Project proponent shall ensure that the construction activity is undertaken strictly in accordance with the approved site plan/layout drawing annexed to this Environmental Clearance letter. However, it is subject to compliance to the provisions of local authorities regarding setbacks, FAR etc., shall be adhered to.

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

48. The project proponent shall leave a buffer of 75 meters from the Lakes, 50 meters from Primary Rajakaluve, 35 meters from Secondary Rajakaluve and 25 meters 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, Kadamba Ficus, etc., and maintained as green belt. No construction activity shall be undertaken in the said buffer zone.

49. The natural sloping 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."

While Condition No.6 of the operation phase is as under:

"6. The project proponent shall develop a minimum of 43% of the total project site i.e., minimum 21,667.7 sqm. area of green belt. The proponent shall undertake plantation of heavy foliage, indigenous trees species such as Mahagoni, Honge, Neem, Akash Mallige, Kadamba, Ficus and Ashoka, etc., at an escapement of 3 mtrs. x 3 mtrs i.e. 1111 plants/hectare."

27. As already explained above, in addition to violation of Condition No.45 of the EC, there is apparent violation of Condition No.46 because the DP dated 5.3.2018 issued by the BDA is clearly at variance with the conceptual plan/drawings (Annexure-A/3, Page No.57) submitted by the project proponents before the SEIAA for obtaining the EC. It is therefore clear that the project proponents have misrepresented before different public authorities and have obtained different permissions.

28. Insofar as violation of Condition No.6 is concerned, the following aspect of the matter is relevant. In this background, the application form submitted for obtaining consent from the Pollution Control Board dated 10.1.2018 (consent fee paid on 11.01.2018), is produced by the project proponent along with their Reply at AnnexureR-4 (pages 271- 279). The said document clearly states as under:

"I/whereby apply for the Consent for Establishment for the new Proposed Residential Apartment Project, consisting of various Residential buildings and facilities for other required amenities, under Section 25 of the Water (Prevention & Control of Pollution) Act, 1974 (6 of 1974) for establishing or taking any steps for establishment of industry / operation processor any treatment and disposal system to bring into use any new / altered for the discharge of sewage / trade effluent or continue to make discharge of sewage / trade effluent from land/premises owned by **M/s Wonder Projects Development Pvt. Ltd.**, consent for the period from 2018, the other relevant information is given below:

16(c) Nature of plantation carried Out
(attach Agricultural Management plan
provided/Proposed)

Lawns, Shrubs, Horticultural & Ornamental Plants as per
Landscape Plan"

Further, at Serial No.29 (Page No.279) of the above said consent application is reproduced as under:

"I/We further declare that the above furnished information is true & correct to the best of my/our knowledge. I am aware that any wrong information furnished, is punishable under section 44 of the Act."

Hence, it is clear that on the one hand irrespective of what is stated at Serial No.16(c) before the Pollution Control Board, is contrary to the requirements at Condition No.6 of the impugned

EC, while on the other the project proponents have furnished wrong information before the Pollution Control Board. In fact, the proposed developments are contrary to all the above said conditions of the EC and that the constructions that is carried out in the project lands, including ground leveling is also contrary to Condition No.49 of the EC as well as Section 300 of the KMC Act.

29. Under all these facts and circumstances, it is clear that BBMP has taken all appropriate measures and steps for protection of environment and ecology in the context of municipal laws and precautionary principle. Hence, BBMP is not responsible for payment of any compensation that is claimed against BBMP in the above case and on behalf of BBMP there is no non-adherence to statutory duties. It is also clear that BBMP is promptly complying with the judgment in Forward Foundation's case as well as all the laws in force. Hence, these facts and circumstances will also explain that reliefs claimed against BBMP does not arise.”

5. We may note that the Hon'ble Supreme Court vide judgment reported in 2019 SCC Online SC 322, Mantri Techzone Pvt. Ltd. V. Forward Foundation & Ors. restored the buffer zones in terms of the zonal plan and set aside the expansion thereof. As mentioned in the reply above the original buffer zone as per zonal plan is 30m around the lake and 50m from middle of the Rajkalewas in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas.
6. The reply of the project proponent is that safeguards have been incorporated in the EC so as to not disturb the buffer zone.
7. The stand of the SIEAA, Karnataka is that EC has been granted based on Form I and IA and conceptual plan and is subject to leaving the buffer zone in accordance with law. The stand of the State PCB is identical. It is not necessary to refer to the Reply of the State Fire and Emergency Services. It may also be mentioned connected O.A. No.

281 of 2019 and O.A. No. 602 of 2019 also raised an identical issue. The said matters are being contemporaneously disposed of by a separate orders. In O.A. No. 281/2019, vide order dated 11.03.2019 sought a joint report from State PCB, CPCB, BBMP and BDA. Accordingly, reports dated 11.04.2019, 27.04.2019 and 23.09.2019 were received. It may be worthwhile to refer to the order in O.A. No. 281/2019, reproducing the report dated 23.09.2019:-

“The joint Committee has filed its report through the State PCB on 23.09.2019 finding as follows:-

Existing properties in Kaikondrahalli Lake buffer area and violation, if any noticed are tabulated below:

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	<i>Kidzee School and cross road established</i>	<i>Not a permitted activity</i>
		11/2	<i>Sri Mitra Builders & Developers, established residential apartment by name "Sri Mitra Spring Valley"</i>	<i>The project authorities have established, swimming pool, club house and approach road in the lake buffer area, which is not permitted activity.</i>
		11/2	<i>ALPS Prime Spaces Pvt Ltd, established residential apartment by name" Alps estate</i>	<i>South east portion of the project area where STP and Exit gate situated is in buffer area, which is not permitted activity.</i>
		14	<i>Private building and commercial establishment in the buffer area.</i>	<i>Not a permitted activity.</i>
B	<i>Kasavanahalli</i>	39	<i>C & D wastes are dumped and used for Solid Waste segregation by BBMP contractor.</i>	<i>C & D waste debris shall be removed and solid waste segregation has to be stopped by BBMP. Not a permitted activity</i>
		40	<i>There is no construction activity except establishment of temporary labour shed after some distance.</i>	<i>BBMP has to verify whether these shed falling under</i>

			<i>buffer or not.</i>	
		62	<p>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 Kaikondrahlli Tank. Project under construction.</p>	<p>Sy No. 62 and 63 falls under Lake buffer area.</p> <p>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.</p>
		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	Residential sheet houses constructed in the area of 1 acre 4 guntas and 1 acre 6 guntas is vacant. Further, the	Not a permitted

		72/2 73	owner of the Sy No. 72/2 is started leveling land adjoin to the lake. Sheet building construction in Sy No. 73 still exists.	activity
	Kasavanahalli	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

On the above listed properties, the following properties have obtained Environmental Clearance from SEIAA and Consent to Establishment & Operation from the KSPCB.

- Sy No. 68: SJR Enterprises Pvt Ltd., established Residential Apartment by name SJR Water Mark.
- Sy No. 11/2: Sri Mitra Builders & Developers, established residential apartment by name "Sri Mitra Spring Valley"
- Sy No 11/2: ALPS Prime Spaces Pvt Ltd, established residential apartment by name "Alps estate"
- Sy Nos 61/2, 62 and 63/2: Godrej by name "Wonder Projects Development Pvt Ltd"-under construction

The relevant photographs on Violation of Buffer are attached as Annexure 4.

4.0 OBSERVATION OF COMMITTEE ON THE REPRESENTATION SUBMITTED BY THE MAHADEVAPURA PARISARA SMRAKSHNE MATTU ABHIRUDHI SAMITI (MPSMAS)

The Mahadevapura Parisara Smrakshne Mattu Abhirudhi Samiti (MPSMAS) through Managing Trustee Sri Subramanian Sankrana submitted updated representation to Karnataka State Pollution Control Board (KSPCB). The pointwise observation of the Joint Committee is given as Annexure 5.

Further, as noticed by the committee during the restoration work under taken by BBMP, BBMP established walkway by rising the

lake bed around the periphery of the lake and constructed toilet and amphitheater within the lake area.

5.0 OVERALL OBSERVATION AND SUGGESTION OF THE COMMITTEE

The observations of the committee are:

- There are three main feeder drains to the Kainkondrahalli 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 & 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. 71/1,71/2,72/2,72/1,72/2,74/5B 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 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 & 72/2 adjoining to lake is being filled with new soil for leveling.
- 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 appropriated action to clear the violations/encroachment noticed in the existing properties & activities in the buffer area.”*

8. In view of the above, stand of the project proponent that the project is permissible cannot be accepted. No EC could have been granted which permitted construction on the Buffer Zone of the lake and drains merely by imposing a condition that no such construction will be raised. It is clear that the project stipulates construction in the buffer zone, in violation of Zoning Plan and judgment of this Tribunal as affirmed by the Hon'ble Supreme Court.

9. Accordingly, the appeal is allowed and the EC is quashed.

10. The SEIAA, Karnataka, State PCB, BBMP and Bengaluru Development Authority may take further action accordingly in accordance with law.

The appeal stands disposed of.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

February 03, 2020
Appeal No. 54/2018
(M.A. No.541/2018, I.A. No.140/2019,
I.A. No.352/2019 & I.A. 54/2020)
A

