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

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**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
   Bengalore-560020
   Represented by its Commissioner

5. **Bruhat Bengaluru Mahanagara Palike (BBMP)**
   N.R. Square, Corporation Circle,
   Bengalore-560001
   Represented by its Commissioner

6. **The Karnataka State Pollution Control Board**
   "Parisara Bhavan", #49, 4th and 5th Floor,
   Church Street, Bengalore-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,
   Bengalore-560001

5. **Karnataka State Pollution Control Board (KSPCB)**
   Through its Chairman,
   "Parisara Bhavan", #49, 4th and 5th Floor,
   Church Street, Bengalore-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
   Bengalore-560020
   Represented by its Commissioner

4. **Bruhat Bengaluru Mahanagara Palike (BBMP)**
   N.R. Square, Corporation Circle,
   Bengalore-560001
   Represented by its Commissioner

5. **State of Karnataka**
   Vidhana Soudha,
   Bangalore-560001
   Represented by its Chief Secretary

6. **Karnataka State Pollution Control Board (KSPCB)**
   "Parisara Bhavan", #49, 4th and 5th Floor,
   Church Street, Bengalore-560001
   Represented by its Chairman

7. **Bangalore Electricity Supply Company (BESCOM)**
   Corporate Office, K.R. Circle
   Bangalore-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)

**Counsel for Appellant(s)/Applicant(s):**
Mr. Raj Panjwani, Senior Advocate with Mr. Rahul Choudhary, Advocate
(In Appeal No. 54/2018 and OA No. 602/2019)
Mr. Ram Prasad, Advocate (In OA No. 281/2019)

**Counsel for Respondent(s):**
Mr. Pinaki Misra, Senior Advocate with Mr. V. D'Costa and Ms. Astha Ojha, 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**

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

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**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 $m^3$ of earth for Phase-1 and 85000 $m^3$ 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 is 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, account 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 apprised 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** (KSPÇB 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).<br>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 sub-dividing 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 sproceeded 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**
> xxxxxxxxx
> (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.
> xxxxxxxxxxx
> **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***<br><br>*2 Basement, Ground and 20 Upper Floors* | ***Tower A and C***<br><br>*Each of 2 common basements, common ground floor and* ***20 upper floors***<br><br>***Tower B***<br><br>*2 common basements, common ground floor and* ***19 upper floors*** | ***Tower A***<br><br>*Common basement, common ground floor, common 1st floor and* ***2nd floor to 13th floor***<br><br>***Tower B, C and D***<br><br>*Each of common basement, common ground floor, common 1st floor and 2nd 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:-

" **Table 1**

| **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 BESCOM 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 Abhivrudhi 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 Kaikondrahlli 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<br>72/2<br>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<br>71/2<br>72/1<br>72/2<br>73<br>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 champers 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 $m^2$
- Area deducted under kharab : 1,315.21 $m^2$
- Net Site Area : 50,382.95 $m^2$
- Area Reserved for Park & Open spaces : 05,093.87 $m^2$
- Area Reserved for Civic Amenities :02,540.66 $m^2$
- Net Site Area for Residential Development (95%) :47,842.29 $m^2$

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<br>➢ Sy. No. 61/2 - 3 Acres 05 Guntas<br>➢ Sy. No. 62 - 3 Acres 02 Guntas<br>➢ 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.<br>➢ 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.<br>➢ 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**.<br><br>➢ 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 $m^2$ 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 $m^2$ 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****; t*he 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?***<br>• *What is the* ***Buffer area from centre of the secondary nala to Block-I and Block-II?***<br>• *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?*<br>• ***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?***<br>• *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?*<br>• *To confirm whether any construction temporary/ permanent nature undertaken in buffer area?*<br>• *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.*<br>• *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.*<br>• *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-l 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***

| | |
|---|---|
| *Total FAR achieved* | *93423.70 Sq Mts* |
| *Parks and open spaces* | *4833.73* |
| *Civil amenities* | *2524.1.8* |
| ***Total*** | ***100781.61 Sq Mts*** |

***PHASE-2***

| | |
|---|---|
| *Parking* | *17605.05* |
| *FAR deductions* | *18,442.05* |
| *Lift and Ramps* | *837.0* |
| *Shafts* | *706.0* |
| ***Total*** | ***37,590.1 Sq Mts*** |

***PHASE-1***

| | |
|---|---|
| *Parking* | *13,835.20 Sq Mts* |
| *FAR deductions* | *14,688.20* |
| *Shafts* | *696.0* |
| *Lifts and Ramps* | *853.0* |
| ***Total*** | ***30,073.2 Sq Mts*** |

***Grand Total:***
***Common Values of Project +Phase-l + 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 19thFebruary, 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 be 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 tempered 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 Bengluru***.

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

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

*Administration and recover charges thereof from the said Respondents.*

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

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

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

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 per 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, Bengalore, 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.**<br><br>**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**.<br><br>**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.<br><br>**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 (≥ 20,000 Square meters)**

The **project proponent may submit online application in Form1A** 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.**<br><br>**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**.<br><br>**Note 2.-** "General Conditions" shall not apply<br><br>**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. mrts 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.<br><br>**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.*<br>*Geological Coordinates*<br>*Latitude : 12°54'38.21"N*<br>*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.<br><br>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 $m^3$ for phase 1 and 85,000 $m^3$ 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**.<br><br>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**.<br><br>**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**<br><br>Harlur/"Kasavanahalli |

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

"

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% | 10842.17<br>47842.29=22.66% < 50.00% |
| 5. | No. of Floors | ___ | 2BF+GF+20Upper Floor |
| 6. | Setback | Front=16.00M<br>Rear=16.00M | Front=16.00M<br>Rear=58.54M |

| | | | |
|---|---|---|---|
| | | Left=16.00M<br>Right=16.00M | Left=16.00M<br>Right=18.02M |
| 7. | No. of Units | ___ | No. of units=**625 units**<br>EWS units = 63 units(10.08%)<br>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>*<br>*Each of 2 common Basements, common Ground floor & 20 upper floors*<br><br>*<u>Tower-B</u>*<br>*2 common Basement, common Ground floor & 19* |

| | | | |
|---|---|---|---|
| | | | *upper floors.* |
| *5* | *Floor wise details of the occupancy:-* | | |
| | *Tower-A, B & C*<br>*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*<br>***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-Il & 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 1.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 | : | Tower-A<br>Common Basement, common ground floor common 1st floor & 2nd floor to 18th floor<br><br>Tower B, C & D<br>Each of common Basement, common Ground floor, common 1st floor & 2nd floor to 20th floor |
| 6 | Floor wise details of the occupancy | | |
| | **Tower-A,B, C & D** | : | 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 1st floor | : | For parking 148 cars, 3 Electrical Panel Room, 1 Communication Room & Swimming Pool Plant Room. |
| | **Tower-A** | | |
| | 2nd floor to 4th floor | : | 6 flats on each floor x 3 floors = 18 flats. |
| | 5th floor to 16th floor | : | 8 flats on each floor x 12 floors = 96 flats. |
| | 17th floor | : | 7 flats out of which 2 flats are duplex type. |
| | 18th floor | : | Upper portion of duplex flats. |
| | **Tower-B** | | |
| | 2nd floor to 18th floor | : | 4 flats on each floor x 17 floors = 68 flats. |
| | 19th floor | : | 2 flats, out of which one flat is duplex type and Multipurpose Hall |
| | 20th floor | : | Upper portion of duplex flat, Maids Room & Terrace/refuge area. |
| | **Tower-C** | | |
| | 2nd floor to 4th floor | : | 4 flats on each floor x 3 floors = 12 flats. |
| | 5th floor to 16th floor | : | 6 flats on each floor x 12 floors = 72 flats. |
| | 17th floor | : | 6 flats. |
| | 18th floor | : | 4 flats, Library, Café, Gym & Outdoor area. |
| | 19th floor | : | 4 flat out of which 2 flats are duplex type, Aerobics/Dance, Yoga, Cards Area, Spa and Saloon |
| | 20th floor | : | Upper portion of duplex flats & Terrace/refuge area. |
| | **Tower-D** | | |
| | 2nd floor to 18th floor | : | 4 flats on each floor x 17 floors = |

| | | | |
|---|---|---|---|
| | | | 68 flats. |
| | 19th floor | : | 3 flats, out of which one flat is duplex type and Squash Court (double height) |
| | 20th 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, Banglore 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, Banglore East Taluk, Ward No. 150, Mahadevapura Zone, Banglore.*
>
> *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:

***"<u>Location Details:</u>*** *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 I 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 Benguluru 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 survery 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 resaves 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 form 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 1409.2006 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 field 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**<br><br>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 graining 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 outskirt 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 then "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 Statuary 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