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

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**ORIGINAL APPLICATION NO. 222 OF 2014**

**IN THE MATTER OF:**

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

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

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

.....Applicants

Versus

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

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

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

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

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

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

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

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

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

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

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

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

.....Respondents

**Counsel for Applicant**:

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

**Counsel for Respondents:**

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

**JUDGMENT**

**PRESENT:**

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

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

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

**JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

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

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

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

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

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

the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was also observed that the project lies between the above stated two lakes. Respondent no. 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11th November, 2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

3. It is the case of respondent no. 5 that such NOC was issued but it covers only an area of 17,404 sq mtr, whereas the total built-up area as noted by the SEAC is 13,50,454.98 sq mtr. It is alleged by the applicants that respondent no. 9 obtained NOC from respondent no. 5 by concealing material facts and by misrepresenting that NOC is required only for residential units, which forms a very minuscule part of the total project. Respondent no. 9 had approached the Karnataka State Pollution Control Board (for short the 'KSPCB'), respondent no. 4 herein, for obtaining clearance which was granted on 4th September, 2012, subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. The applicant contends that the grant of consent by the KSPCB to respondent no. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent

Authority and no construction was to commence until such clearance was granted.

4. According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over *Rajakaluves*. The construction has been commenced over the ecologically sensitive area of the Lake Catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities the applicant submits that the conversion of land from 'Protected Zone' to 'Residential Sensitive' area is violative of the law. The Project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the *Rajakaluves*. It is also alleged that respondent nos. 9 & 10 have started to level the land by filling it with debris, thus causing damage to the drains. It is further stated that the conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the *Rajakaluves* have been violated. This has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). It is

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

5. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A. T. Ramaswamy in the month of July, 2005, which stated that there were 262 water bodies in Bangalore city in 1961, which drastically came down because of trespass and encroachments. It was also affirmed that about 840 Kms of *Rajakaluves* have been encroached upon in several places and have become sewage channels.

6. The Hon'ble High Court of Karnataka in *Environment Support Group and Another v. State of Karnataka, Writ Petition No. 817/2008* appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil to suggest immediate remedial action in order to remove encroachments on the lake area and the *Rajakaluves* and preservation of the lakes in and around Bangalore city. Other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for Preservation, Restoration or otherwise of the existing tanks in Bangalore Metropolitan Area, 1986 which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tanks is not polluted. The findings of the Environmental

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

7. The applicants claim to have obtained the monitoring report of the project by respondent no. 2 through RTI on 21st August, 2013. The report dated 14th August, 2013 revealed that the Project Proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction or operational phase of the project. This breach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

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

necessary approval from respondent nos. 6 and 4. It is alleged that a vague reply had been submitted by respondent no. 9 making certain misrepresentations. Despite all this, respondent nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants also rely upon the fact that the revised Master Plan, 2013 issued by Respondent no. 8 specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the *Rajakaluves*. It is also the case pleaded by the applicant that Respondent no. 9 had obtained the NOC from Respondent no. 5 only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by the Respondent no.9 is based upon the said partial NOC issued by Respondent no. 5 which itself is a misrepresentation. The applicants have pleaded that the projects are bound to create water scarcity as the requirement of project of Respondent no. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what Respondent no. 5 supplies to the entire Agaram Ward. It is stated by the applicants that the construction of respective projects by respondents no.9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in topography of the area, posing potential threat of extinction of the Bellandur lake,

causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

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

9. Different respondents in the application have filed independent replies as already noticed. Respondent nos. 9 and 10 are the Project Proponents against whom the applicant has raised the principal grievance. Thus, first we may notice the case advanced by respondent nos. 9 and 10. In its replys, respondent no. 9 has submitted that the said respondent corporation was incorporated with the objective of establishing an Information Technology Park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. This respondent had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Proposal of respondent no. 9 was considered in 78th High Level Committee meeting held on 21st June, 2000 and after examining the proposal, the same was approved by the government on 06th July, 2000. Before the State High Level Committee, the

Respondent had mentioned that it would require 110 acres of land, 25MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and 4 lakh litres of water per day from respondent no. 5. The lands for the project were initially notified by the BDA. However, later the lands were de-notified vide notification dated 10th February, 2004. Subsequently, the lands were allotted to the replying respondent vide letter dated 28th June, 2007 for which lease-cum-sale agreement was signed on 30th June, 2007. Considering the overall development of the State of Bangalore, the said Respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtr. The Project was conceived as a zero waste discharge project. According to this Respondent, the project is located one and a half kilometres away from the southern-side of the Bellandur Lake. Towards the North adjacent to the Project site, lie vast stretches of lands belonging to the Defence, and towards the East, which is completely developed lies the Project of Respondent no. 10 and that another developer is also developing a project on the western side. Respondent no. 9 has submitted that it has obtained sanction plan on 4th July, 2007 which was being renewed from time to time. The Respondent also claims that it has obtained No Objection Certificate from Airport Authority of India on 9th April, 2010, certificate dated 15th April, 2010 from Dr. Ambedkar Institute of Technology and that the Bharat Sanchar Nigam Ltd, vide its communication dated 16th April, 2010, granted clearance for the

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

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

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

with regard to the covering and blocking the Rajakaluves (Storm Water Drains) drying the wetland and raising of the construction thereupon adversely affecting the lake, are specifically disputed and denied. The Respondent claims that it has already spent a sum of Rs 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities etc., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties.

12. It is specifically stated by this Respondent that certain print media had published articles stating that construction was unauthorized, illegal and that it was prejudicial to the environmental and ecological interest of that area. Not only this, Namma Bengaluru Foundation, Citizen's Action Forum, Koramangala Residents Association and others, on the basis of a report prepared by Professor T. V. Ramachandra, filed a Public Interest Litigation in the High Court of Karnataka (Writ Petition No. 36567-36574/2013). Besides making the above allegation, it was also alleged in those petitions that the project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court of Karnataka after hearing the parties issued notice, however, denied to pass any interim order of stay as prayed by the petitioners. The said petition is stated to be pending before the Hon'ble High Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Respondent no. 6 has taken a stand that it was not at all aware of the project initiated by respondent no. 7, KIADB. The said respondent claims it came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time respondent no. 6 was in the dark. After the complaints, the said respondent immediately inspected the Bellandur Lake and the Agara Lake on 12th June, 2013 and prepared an inspection report. In the report, it was noticed that the large scale construction activities in the catchment area of Bellandur Lake was going on and there was a change in the land use which in turn has directly affected the catchment of Bellandur

Lake. The wetland area of Agara Lake had also shrunk which originally formed the irrigation area for the adjoining agricultural lands. Respondent no. 6, vide its letter dated 6th July, 2013, had questioned the decision of respondent no. 7 and even requested to stop the construction activity and to reclassify the land as non-SEZ area. It was thereafter on 31st August, 2013 that respondent no. 9 wrote a letter to respondent no. 6 for according approval for the proposed development projects. However, vide its letter dated 23rd September, 2013, respondent no. 6 informed respondent no. 7 that the replying respondent had no authority to grant or deny construction projects but at the same time it also communicated their objections to respondent no. 7, mentioning that construction activity would be in contravention to the directions of the Hon'ble High Court of Karnataka as well as of the Hon'ble Supreme Court. Despite these warnings, respondent no. 7 granted approval to the extension of building drawings of the project in favour of respondents no. 9 & 10 on 11th October, 2013 and 3rd January, 2013 respectively, with certain conditions like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed; further, that the natural sloping pattern of the project site shall remain unaltered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite these objections by respondent no. 6, the plans were approved and approvals extended from time to time. Therefore, respondent no. 6 submits that these projects, as approved by

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

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

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

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

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

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

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

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

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

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and / or constructive *res judicata*?
4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?
5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

## Discussion on Merits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "PRAYER
> In the above premises, it is prayed that this Hon'ble Court may be pleased to:
> (a) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 8 vide Lease cum sale agreement dated 30.06.2007 at Annexure "B", more fully described in the schedule to the said agreement;
> (b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 9 vide Lease cum sale agreement dated 20.03.2008 at annexure "C", more fully described in the schedule to the said agreement.
> (c) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from, in any manner, further alienating the public land, described in the schedule o the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/non-governmental associates and organizations without following the due process of law;
> (d) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from allotting the said land, described in the schedule to the Lease cum Sale Agreement at Annexure B and C, for purpose which may have an adverse consequences on the environment and, in particular the land in issue;
> (e) Direct the Respondent no. 1 to appoint a Task Force to look into illegal allotment of land in favour of private persons at the cost of environment and ecology and report to the Respondent no. 1 take action over them;
> (f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.
> INTERIM PRAYERS
> Pending consideration of this writ petition, this Hon'ble Court be pleased to:
> (a) Pass an order staying all construction activity under the project being carried out on the land in issue;
> (b) Pass an order restraining the Respondent Nos. 8 and 9 from alienating the land described in the schedule

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

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

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

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

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

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

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

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

statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: ***Nivedita Sharma***).

36. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)*** this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.

In ***Chhabil Dass Agrawal*** this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

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

"37.

…Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

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

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

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

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

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

For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High

Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of 'judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka.

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

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

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

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

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

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

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

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

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

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

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

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

governmental and even non-governmental organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reference to the ecological and environmental implications as follows: -

"Ecological and Environmental Implications:

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

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

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

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

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

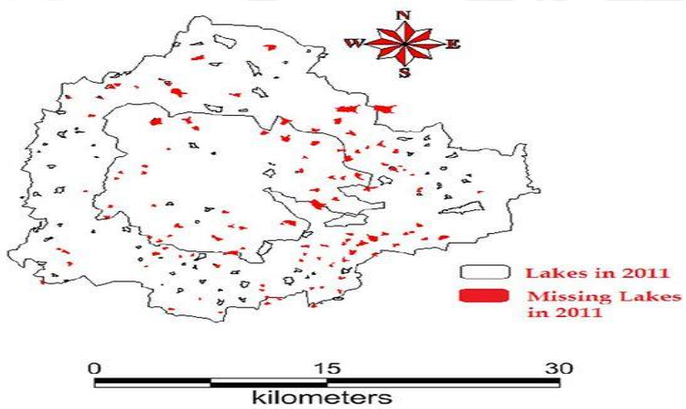


**Figure 6: Lakes encroached by land mafia**

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

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

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

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

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

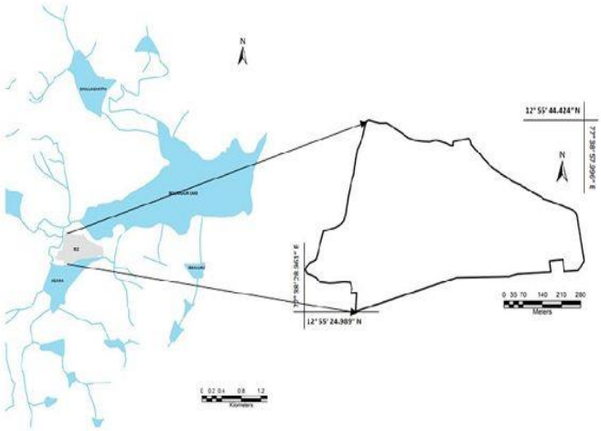

Figure 6: SEZ

**Significance of the Region**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposal envisages for construction of residential apartment with (Block-1 (Block A: 2B+G+ 14UF; Block B: 2b+G+10 UF) + Block 2 (2B+G+14UF), retail, hotel & office building with 3B+G+11 UF, SEZ with 3B+G+11UF +Terrace and Non-SEZ 3B+G+12UF+Terrace on the plot area of 2,92,636.03 sqm. The total built-up area is 11,50,454.98 sq. m. The total water requirement is 4587 KLD and the investment is of Rs. 2347 crores.

72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

1) The construction of both the projects had started prior to the grant to Environmental Clearance.

2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.

3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.

4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.

5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.

6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.

7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xl) in the Environmental Clearance of respondent no. 9 cannot be

complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

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

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

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

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

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

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

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

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

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

1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated herein after.

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

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

    c) Chief Town Planner of BBMP, Bangalore.

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

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

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

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

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

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

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

5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

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

7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages

and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

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

9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively.

Further, the Committee would also report whether both respondent nos. 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent nos. 9 and 10 respectively.

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

11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent nos. 9 and 10 are hereby restrained from creating

any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.

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

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

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

15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, onto

the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

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

**Justice Swatanter Kumar**
**Chairperson**

**Justice U.D. Salvi**
**Judicial Member**

**Dr. D.K. Agrawal**
**Expert Member**

**Professor A.R. Yousuf**
**Expert Member**

**New Delhi**
7th May, 2015