BEFORE THE NATIONAL GREEN TRIBUNAL,

SOUTHERN ZONE BENCH, CHENNAI

APPLICATION NO. 175 OF 2015 (SZ)

IN THE MATTER OF:

1. Namma Bengaluru Foundation
   A public charitable trust
   Having its registered office at
   No. 3J, NA Chambers
   7th 'C' Main, 3rd Cross, 3rd Block
   Koramangala, Bengaluru 560034
   Represented by its authorised signatory,
   Mr. Sridhar Pabbisetty

2. Mahadevpura Parisara Samrakshane Mattu
   Abhivrudhi Samithi (Mahadevapura Environment
   Protection and Development Trust)
   A registered charitable trust
   Having its registered office at
   118 West, Trinity Woods
   25/2, Ambalipura village,
   Sarjapur Road, Bengaluru 560102
   Represented by its authorised signatory,
   Ms.Priya Ramasubban ..... APPLICANTS

AND

1. State of Karnataka
   Vihana Soudha
   Bengaluru 560001

2. Ministry of Environment, Forests and Climate Change,
   Regional Office-South Zone,
   Kendriya sadan, IV Floor
   E & F Wings, 17th Main Road,
   Koramangala II Block, Bengaluru 560001
   Represented by its Member Secretary

3. State Environment Impact Assessment Authority
   Department of Environment & Ecology,
   Room No. 709, 7th Floor,
   M. S Building, Bengaluru 560001
   Represented by its Member Secretary

4. Karnataka State Pollution Control Board,
   Parisara Bhavana, 1st to 5th floor,
   49 Church Street, Bengaluru – 560001

Represented by its Chairman

5. Bangalore Development Authority,
   T. Chowdish Road,
   Bengaluru 560020
   Represented by its Chairman

6. Bruhath Bengaluru Mahanagara Palike,
   N.R Square, Corporation Circle,
   Bengaluru 560020
   Represented by its Commissioner

7. Shrivision Homes Private Limited
   A Company incorporated under Companies Act, 1956
   Having its registered office at
   40/43, 8th Main, 4th Cross, RMV Extension,
   Sadashiv Nagar, Bengaluru 560080
   Represented by its Managing Director .... RESPONDENTS

M.A. No.28 of 2016

IN

(UNNUMBERED APPEAL No. - of 2016)

IN THE MATTER OF:

1. Namma Bengaluru Foundation
   A public charitable trust
   Having its registered office at
   No. 3J, NA Chambers
   7th 'C' Main, 3rd Cross, 3rd Block
   Koramangala, Bengaluru 560034
   Represented by its authorised signatory,
   Mr. Sridhar Pabbisetty ... APPELLANT IN PROPOSED APPEAL

AND

1. State Environment Impact Assessment Authority
   Department of Environment & Ecology,
   Room No. 709, 7th Floor,
   M. S Building, Bengaluru 560001
   Represented by its Member Secretary

2. Shrivision Homes Private Limited
   A Company Incorporated Under Companies Act, 1956
   Having Its Registered Office At
   40/43, 8th Main, 4th Cross, RMV Extension,
   Sadashiv Nagar, Bengaluru 560080
   Represented By Its Managing Director ….. RESPONDENTS

Counsel appearing for the Applicant/Appellant: M/s. Samvad Partners for Applicants in Application No.175 of 2016 and for proposed Appellant in M.A.No.28 of 2016 in Appeal No._ of 2016.

Counsel appearing for the Respondents: Mr. Devaraj Ashok for Respondent No. 1 in both Application No.175 of 2016 and M.A.No.28 of 2016 in Appeal No._ of 2016, Ms. M.E Saraswathy for Respondent No. 2 and 3 in Application No.175 of 2016, Mr. R Thirunavukarasu for Respondent No.4 in Application No.175 of 2016, M/s J. Anandavalli and G.Sumithra for Respondent No.5 in Application No.175 of 2016, Mr. T V Sekar for Respondent No.6 in Application No.175 of 2016 and Mr. T.R. Rajagopalan, Senior Advocate for Mr. D. Ravichander for Respondent No.7 Application No.175 of 2016 and Respondent No.2 in M.A.No.28 of 2016 in Appeal No._ of 2016.

ORDER

PRESENT:

1**. Hon'ble Justice Dr.P.Jyothimani**
Judicial Member

2. **Hon'ble Shri. P.S.Rao**
Expert Member

Delivered by Hon'ble Justice Dr.P. Jyothimani, Dated 26th April, 2016

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1. Whether the judgment is allowed to be published on the Internet. Yes / ~~No~~
2. Whether the judgment is to be published in the All India NGT Reporter. Yes / ~~No~~

1. (i) Application No.175/2015 is filed by the applicants who are Non-Governmental Organisation and Trust respectively taking up the public issues including cleaning of lakes in the city of Bengaluru, preventing encroachment of Bellandur lake apart from rejuvenating Kaikondanahalli and lower Ambalipura lake in an environmentally sustainable and socially responsible manner. The said application is stated to have been filed since number of lakes in Bengaluru City is greatly dwindling due to abuse of lake beds, valley zones, for construction of high rise buildings. According to the applicant, the 7th respondent Project Proponent has developed a residential developmental project in the name of *Shriram Chirping Woods* consisting of several blocks of apartments spread over an area of 16 acres in Kasavanahalli village, Varthur Hobli, Bengaluru East Taluk, Bengaluru which is stated to be situated in the midst of ecologically sensitive area comprising of valley and buffer zones between Kasavanahalli lake (also called Haralur lake) and Kaikondaranahalli/Kaikondaranahalli lake in Bangalore. The

applicant also understands that the third party interest have been created by virtue of constructions made by the 7th respondent.

(ii) According to the applicants in the area of 15 acres and 33 guntas, approximately 28983.77 sq.metres of land (7 Acre 6.48 guntas) falls within the sensitive zone, approximately 7887.41 sq.metres (1 Acre 38 guntas) falls within the buffer zone, 4173.86 sq.metres (1 acre 1.25 guntas) is estimated to be required for road. It is also stated that the property has a secondary nala buffer running through the middle. It is also the case of the applicants that 7th respondent applied for change of land use on 21.01.2013 from industrial (hi-tech) to residential. As the extent of 28, 983.77 sq.metres of land falls within the sensitive zone, the application of the 7th respondent was referred to Sensitive Zone Sub-Committee of the 5th respondent Bengaluru Development Authority (hereinafter called 'BDA'), who has recommended that a buffer zone of 25 metres should be earmarked on each side of the nala connecting Haralur and Kaikondaranahalli lakes running through the property in which the construction is being made. With the above recommendations and certain other conditions, the 5th respondent has permitted change of land use sought by the 7th respondent on 05.02.2013. It is also stated that the 5th respondent has directed the project proponent to submit an application for sanction of development plan incorporating the above said conditions. It is also the admitted case of the applicant that on 27.02.2013, the 7th respondent project proponent has obtained sanction of development plan for its project from BDA, the 5th respondent, as per the sanction letter dated 15.5.2013. The conditions with which the sanction was given include relinquishment and development of about 100 metre of land on either side of the property for road widening and 10% of all apartment/villament units would be reserved for economically weaker sections. Accordingly the 7th respondent by a registered relinquishment deed dated 29.4.2013 has relinquished the land earmarked for road widening and parks. It is also the admitted case of applicant that pursuant to the sanction, the 7th respondent has obtained various No Objection Certificates (hereinafter called 'NOCs'), Environmental Clearance (hereinafter called 'EC') for the construction of project apart from Consent for Establishment (hereinafter called 'CTE') from the 4th respondent, Karnataka State Pollution Control Board (hereinafter called 'KSPCB') on 09.05.2013 and prior EC from State Environmental Impact Assessment Authority (hereinafter called 'SEIAA') namely the 3rd respondent on 29.07.2013. The applicants have also filed the copies of EC, CTE and other documents.

(iii) As per the clearance, the project was proposed to be on a plot area of 64,039.91 sq.metres with 870 units in 21 towers: Towers 1 to 3 &16 to 21 comprise of Basement + Ground + 5 upper floors; Towers 4 to 9 comprise of Basement + Ground + 14 upper floors; Towers 10 to 15 comprise Basement+Ground+4 upper floors and a Club House was to have Basement+Ground+1 upper floor. The total water consumption of the project would be 643 Kilo Litres per Day (hereinafter called 'KLD') with the waste water discharge of 513 KLD and Sewage Treatment Plant (hereinafter called 'STP') with a capacity of 525 KLD and the maximum height of the building to be 44.93 metre. It is the further case of the applicants that the 7th respondent on 06.12.2013 has applied for modified development plan under which the project was divided into three separate blocks. Block one comprises of a residential building with 2 Basement floors + Ground + 19 Upper Floors and a Multipurpose Hall with 2 Basement floors + Ground + 1 Upper Floor; Block 2 comprises of Tower 1 having Basement + Ground + 19 Upper Floors, Towers 2 to 4 having 2 Basement floors + Ground + 24 Upper Floors, Club House having 2 Basement floors + Ground + 1Upper Floor; Block 3 comprises of a residential building having Ground + 6 upper floors along with a Club House with a ground floor. The modified project proposes to utilise the nala buffer zone as a park and open space and the 5th respondent BDA passed a resolution on 31.01.2014 as communicated in the sanction order dated 27.06.2014. It is also the case of the applicants that while considering request of the 7th respondent to change the course of nala running through the property, the 5th respondent has stated that the same has to be done with the approval of Bruhat Bengaluru Mahanagara Palike (hereinafter called 'BBMP'), namely the 6th respondent. It is also admitted that based on modified plan, 7th respondent has executed a registered rectified relinquishment deed on 02.06.2014. 7th respondent has applied for fresh EC from SEIAA on 13.11.2014 and for a fresh CTE from KSPCB, the 4th respondent on 15.11.2014 and according to the applicants as on date of filing this application both the applications were pending consideration of 3rd and 4th respondents respectively.

(iv) It is the case of applicants that pending application for EC, 7th respondent has been carrying on large scale construction activities in the scheduled property. It is also alleged that there are encroachments on the lake bed and catchment area of Kasavanahalli and Kaikondaranahalli lakes. It is also stated that the property in question is located in the Rajakaluve of Kasavanahalli and Kaikondaranahalli lakes. The Rajakaluve refers to a tributary of a river which provides an outlet for inter lake water flow. The applicants have also relied upon certain research papers

published by Prof. T. V. Ramachandra which state that the above stated lakes support 37 species of birds and good population of fish. Fresh sewage enters in the southern side of Kasavanahalli drainage and the canal is being destroyed due to construction activities. Construction of high rises in the buffer zone alter the topography with the result, adjacent localities would be vulnerable to floods. Removal of Rajakaluve would affect inter connectivity and lead to flooding the region. The construction of basement with 2-3 floors would affect the inter connectivity among aquifers and the loss of shore lines along the lake bed as a result of loss of the buffer zone would result in destruction of habitat. The applicants also rely upon a report of Karnataka Lokayukta dated 22.04.2015 indicting about the encroachments made in the Rajakaluve between Kasavanahalli and Kaikondaranahalli lakes. Therefore construction of project by the 7th respondent as authorised by the 5th respondent BDA and other authorities, is in clear violation of provisions of The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter called 'Water Act, 1974') and the consent was given without application of mind. The applicants have also raised various legal grounds of violations under The Environment (Protection) Act, 1986, Water Act, 1974, Biological Diversity Act, 2002 and Rules made thereunder. That apart it is the case of applicants that clearances are vitiated for want of application of mind and that project intends to cause change in flow of water which will prejudicially affect the rivers located topographically lower than Kasavanahalli and Kaikondaranahalli lakes. It is also the case of the applicants that large scale loss of biodiversity is anticipated because of massive structures and Rajakaluve has introduced large amount of sand into the wetland area clearly violating Wetland (Conservation and Management) Rules, 2010 (hereinafter called' Wetland Rules, 2010') and Water Act, 1974. The inaction of the official respondents has resulted in environmental damages. The applicants have also stated that the 7th respondent has continued construction in absence of EC and therefore it is a continuous cause of action and the application is filed under Section 14 and 15 of the National Green Tribunal Act, 2010 (hereinafter called 'NGT Act, 2010') within time.

(v) With all the above averments, applicants have prayed for a direction against the respondents to refrain from further construction upon the disputed property pending investigation by the appropriate authorities regarding the permissibility of construction, to restitute damage caused to environment surrounding the property, to direct respondents No. 1 to 5 to investigate encroachments made by 7th respondent in Kasavanahalli and Kaikondaranahalli lake area and to undertake appropriate legal action.

2. The 2nd respondent Ministry of Environment, Forest & Climate Change (hereinafter called 'MoEF&CC') in its reply dated 09.03.2016 has stated that as per the Environment Impact Assessment (herein after called EIA) Notification issued by the Government of India in 2006, any construction projects or their expansion listed in Schedule to EIA Notification require prior EC from the Central Government or the SEIAA as the case may be. The project in question is a project appraised by State Level Expert Appraisal Committee (hereinafter called 'SEAC') and approved by SEIAA and it does not fall within the purview of MoEF&CC. Regarding the STP and the wetland reclamation, it is the state Government which is responsible to ensure that encroachments are not made in the wetland. The master plan prepared by the State shall demarcate and identify wetlands and other than the above the MoEF&CC has no role in the dispute raised in the application.

3. (i) The 3rd respondent Karnataka SEIAA in its reply dated 06.01.2016 has stated that the proposal of 7th respondent dated 03.01.2013 submitted in Form-I, IA and the conceptual plan were considered and EC was granted on 29.07.2013 based on the recommendations made by SEAC with all specific and general conditions. It is also stated by the said respondent that the proposal of the 7th respondent was considered on sustainability criteria with conditions imposed to ensure that precautionary steps would be taken by 7th respondent and to protect ecology and environment of the area to ensure natural hydrology duly following the principle of sustainable development.

(ii) It is also stated by the 3rd respondent SEIAA, that the 7th respondent has submitted an application on 13.11.2014 seeking EC for a modified plan. The SEIAA in its letter dated 05.05.2015 directed 7th respondent to stop construction activities and in fact for violation of such direction, a complaint has been registered against 7th respondent on 25.7.2015 before the Metropolitan Magistrate & Traffic Court No.1 Bengaluru, under Section 19 of the Environment(Protection) Act,1986.

(iii) Subsequently the application filed by the 7th respondent for modifying the project was considered by SEAC in its meeting held on 09.10.2015 and recommended issuance of EC. The proposal was duly considered and the 3rd respondent has issued EC on 08.12.2015 for the modified project. It is also stated specifically by the 3rd respondent that SEIAA has not approved

diversion of any Rajakaluve or nala and in fact a condition has been imposed in the EC dated 08.12.2015 that the project proponent shall not change the course of nala/canal/valley passing through the project site and the said EC was granted based strictly in terms of law applicable and SEIAA has already taken necessary steps against 7th respondent in accordance with law. It is also denied that EC has been granted with non-application of mind and against law. The allegation regarding environmental damage and allied issues are denied and 3rd respondent states that the same has to be proved by the applicant. It is also stated that the applicants have not provided any particulars to show that the application has been filed within the time specified under NGT Act, 2010 and therefore prayed for dismissal of the application.

4. (i) The 4th respondent KSPCB in its reply dated 06.01.2016, while denying allegations raised by the applicants, state that it is for the applicants to prove the allegations made against the parties. It is stated that it was after verification of documents, land records, building plans approved by the local plan sanctioning authority, KSPCB has issued CTE for 7th respondent project on 09.05.2013 and that was for construction of 870 flats with built up area of about 1,64,390.85 sq.metres at survey No.35, 41, 43, 44, 45, 46, 58, 59, 60 and 61 at Kasavanahalli village, Bengaluru Urban District. It was with specific condition that the project proponent has to treat the sewage generated to urban reuse standards in STP having capacity of 525 KLD and to reuse maximum treated sewage for secondary purposes and excess for gardening within the premises.

(ii) It is further stated by the 4th respondent that project proponent has applied again on 15.11.2014 for CTE to expand the built up area of proposed residential apartments to 1, 79,922.98 sq.metres without changing the number of flats and location. After considering the application of project proponent, 4th respondent has issued CTE on 02.02.2015 for expansion of built up area but without changing the number of flats, sewage generation and STP capacities. The legal grounds raised are also denied to the effect that the consent has been issued with proper application of mind and based on available records.

5. (i) The BDA, the 5th respondent in its reply dated 15.03.2016, while denying the allegations raised by the applicants, has specifically stated that the applicants having not challenged the EC, are not entitled to maintain the application. It is stated that the lands were originally classified as industrial hi-tech sensitive zone as per the Master plan and the 7th respondent has applied for

development of the land and the Sensitive Zone Sub-Committee consisting of 9 members constituted by Government of Karnataka, recommended the same and accordingly the 7th respondent project proponent has relinquished the land earmarked for road widening, parks, open spaces in favour of 5th respondent BDA on 30.04.2013 and thereafter 7th respondent was granted permission on 15.05.2013. The 3rd respondent has originally granted EC to 7th respondent on 29.07.2013. On the application filed by the 7th respondent for grant of development plan in the land concerned; it was considered and approved by the Town Planning Committee on 27.02.2013 subject to certain conditions.

(ii) It is stated by the BDA that since there was a nala running through the middle of property North-South direction and a drain on North-East side of the property, 7th respondent after obtaining necessary permission for change of course of nala from the Government department, again approached the 5th respondent for a modified plan which was placed before the Town Planning Committee and the Committee has given a suggestion that 7th respondent has to leave 25 meter buffer zone on either side of nala which lies middle of the property or 50 meter buffer zone in their land from nala where its course gets to be changed.

(iii) It is further stated by the 5th respondent that after such suggestions were made by the Committee, 7th respondent has submitted a request for a modified plan for retaining nala which lies on the middle of the property abiding by the condition of leaving 25 meter buffer zone on either side of it. The said request was considered by the 5th respondent under delegated powers and sanction was accorded to the modified plan and in accordance with modified plan 7th respondent obtained EC on 08.12.2015 from the 3rd respondent. It is specifically stated by the 5th respondent that as per Section 14(A)(3) of the Karnataka Town & Country Planning Act, 1961, 5th respondent is empowered to permit change of land use from industrial (hi-tech) to residential and in accordance with the said powers, 5th respondent has permitted 7th respondent to have residential development activities in the said land and the 7th respondent is proceeding with the construction work after fulfilling all the formalities and the applicants have not specifically stated any illegal act or that the project is affecting environment. It is also denied that the modified plan granted by the 5th respondent causes great impact on environment and pressure on ecological balance. It is specifically stated that there is no encroachment on the lake bed and catchment area on Kasavanahalli village. It is also stated that there are no encroachments on Rajakaluve between

Kasavanahalli and Kaikondaranahalli lakes. It is also specifically stated by the 5th respondent that by the modified plan there is no shifting of Rajakaluve and Rajakaluve is retained in the same manner as it exists and therefore the allegations made are denied by BDA.

6. The 6th respondent BBMP in its reply dated 24.02.2016, while denying various allegations raised by the applicants has stated that for development of property concerned, 7th respondent has approached the 5th respondent and sanction plan was issued by the 6th respondent based on development plan issued by 5th respondent BDA. The 6th respondent being local plan sanctioning authority after examining the documents, has sanctioned the plan in accordance with the prevailing laws and the 7th respondent has put up construction in accordance with sanctioned plan. The 7th respondent before commencement of project has applied for commencement certificate and after inspecting the property, pillar positions has been erected as per sanctioned plan, a partial commencement certificate came to be issued. Regarding the allegation of sensitive zone, 6th respondent states that 5th respondent has considered all the issues before issuing development plan. It is also specifically stated by the 6th respondent that there is a secondary nala running through the middle of the property. It is also stated by the 6th respondent about shifting of course of Rajakaluve permitted by the Special Commissioner (Urban). It is only the development authority namely the 5th respondent which has to grant approval and 6th respondent being local plan sanctioning authority, acts only in accordance with the master plan prepared by the BDA. It is also stated that the construction being put up by the 7th respondent will not alter the topography in the Kasavanahalli and Kaikondaranahalli lakes and applicants are only exaggerating something which are not available on facts. It is also stated that project in question will not aggravate the water problem and therefore prayed for dismissal of the application.

7. (i) The 7th respondent project proponent in its reply dated 26.11.2015, while stating that the application as such is not maintainable in law, has chosen to state that applicants having not made any specific allegation of any violation against the 7th respondent and are not entitled for any relief. The 7th respondent having obtained all necessary licenses and fulfilled statutory requirements has been chosen by applicants for the reason best known to them. While it is true that applicants have obtained permission for change in land use from industrial (hi-tech) zone to residential and there is a recommendation by the Committee to leave 25 metre buffer zone for nala and that 7th respondent was directed to apply for sanction for development plan which was

accorded and all legal formalities have been scrupulously followed and various terms and conditions have been inducted while granting such approval. It is also stated that 7th respondent has applied for all clearances including EC, NOCs from various authorities. The applicants having admitted all those things are not entitled for any relief and on this score the application is liable to be dismissed. It is stated that the course of nala has not been changed by the 7th respondent who has not interfered or obstructed the natural flow of nala. While it is true that 7th respondent has applied for modified EC and CTE, 7th respondent states that the applicants have deliberately suppressed true facts and that modified EC application was made not to hinder the natural passage of Rajakaluve which was found subsequently. It was with that view; 25 metre buffer space was left open on both sides of nala. It is also denied that pending consideration of EC, the 7th respondent has been making large scale construction activities. Further it is denied by the 7th respondent that they have encroached upon lake bed and catchment area of Kasavanahalli and Kaikondaranahalli lakes. It is stated that the valley zone runs through the project but restricted only to Survey Nos. 45, 60 and 43 and throughout the project valley zone is being maintained as per Revised Master Plan -2015 (hereinafter called 'RMP 2015'). It is also stated that survey No.40 abuts the lake and does not form part of the project. Therefore it is clear that having known about all these facts, applicants have chosen to file this application with *malafide* intention.

(ii) The 7th respondent also states that study undertaken by Prof. T.V. Ramachandra has no relevancy to the facts and circumstances of the case. It is also specifically denied that 7th respondent has been deviating while making construction. The modified development plan issued by the 5th respondent is not against any law. It is again reiterated that the 7th respondent is not shifting Rajakaluve and not changing flow of water of rivers and lakes located topographically lower than Kasavanahalli and Kaikondaranahalli lakes. It is also specifically stated by the 7th respondent that no construction activity was taken up in violation of EC, building sanction plan and other approvals. It is also stated that the ground water level is not interfered with by the project of the 7th respondent and in fact the rain water harvesting system has been followed scrupulously. The applicants having stated that EC been granted and construction was only after the grant of EC and hence having knowledge of EC the application ought to have been filed within 6 months. Further, the 7th respondent has made application for necessary approval; in conformity with the change in land use from industrial (hi-tech) to residential. The 7th respondent

has carried on construction activities only pursuant to EC and sanctioned plan. With the above averments, 7th respondent has sought for dismissal of application and vacating the order of stay.

8. M.A NO. 28/2016 IN APPEAL NO. /2016

(i) This Miscellaneous Application is filed to condone the delay of 20 days in filing appeal against EC granted by SEIAA dated 08.12.2015. Of course in the proposed Appeal, facts raised are similar to one raised by Applicants in Application No.175/2015. However the applicant has proposed to challenge the EC granted by SEIAA dated 08.12.2015 on various grounds that the built up area has been modified from 1, 64,390.85 sq.metres to 1, 63,339.63 sq.metres with 810 numbers of residential units. The proposed appeal also states about action taken by the 1st respondent against the 2nd respondent project proponent for violation. The applicant in the proposed appeal has also stated that as per specific conditions issued in the revised EC the Rajakaluve, canals and drainages are to be retained. However according to the applicant, the project proponent has encroached upon Rajakaluve. That apart it is alleged that 1st respondent SEIAA has not applied its mind before granting modified EC. Likewise CTE granted by KSPCB has also been questioned on the basis that as per EC, built up area is reduced from 1, 64,390.85 sq.metres to 1, 63,339.63 sq.metres by reducing 1051.22 sq.metres while the KSPCB has chosen to state that there is an expansion from 1, 64,390.85 sq.metres to 1,79,922.98 sq.metres and therefore it is a non-application of mind. The applicant has also raised a new ground in the proposed appeal that the Karnataka Lake Development Authority (hereinafter called 'KLDA') has classified drain as primary Rajakaluve while BDA has classified it as a secondary Rajakaluve. According to the applicant if there is a primary Rajakaluve, 50 metre buffer zone must be maintained. The applicant had chosen to state in the proposed grounds of appeal defining the primary Rajakaluve as a drain connecting water body at the highest elevation ultimately to the river downstream through series of water bodies whereas secondary Rajakaluve connects the primary Rajakaluve. According to the applicant, in the present case drains running below the project area are connecting Kasavanahalli and Kaikondaranahalli lakes and therefore it is a primary Rajakaluve. The applicant in the proposed appeal also stated about the adverse effects of construction on the lakes as well as the wetlands as it has already been stated in the Application No.175 of 2015.

(ii) However in the MA for condoning delay, applicant which is stated to be a charitable trust has chosen to state that the revised clearance certificate dated 08.12.2015 was made available to the applicant on service to counsel on 08.01.2016 in course of hearing of Application No. 175 of 2015 and the applicant thereafter asked for technical opinion and therefore appeal could not be filed against modified EC within the time granted under provisions of NGT Act, 2010

9. The application to condone delay is opposed by the project proponent in the reply filed on 18.03.2016. According to the project proponent, no acceptable reason has been given for condoning delay and the applicant who is one of the applicants in Application No.175 of 2016 has been aware of original EC dated 29.07.2013 and he has been following it up throughout by raising objections and therefore the reason adduced for condoning delay cannot be accepted. It is further stated by the project proponent that the original EC having been granted on 29.07.2013 in favour of the project proponent, stands unchallenged even as on date and in such circumstances without challenging the original EC, the modified EC sought to be challenged now which is only the continuation of previous EC of 2013, and therefore on the face of it the proposed appeal itself is not maintainable. It is also stated by the project proponent that applicant has chosen to file the application/ proposed appeal without even verifying the revenue records. There was no Rajakaluve at the time when project proponent has purchased the properties in question. However the existence of Rajakaluve was shown in the village map and it was only thereafter that project proponent has applied for modification of EC in order to protect Rajakaluve as shown in village map and executed deed of relinquishment duly registered in favour of BDA by leaving 25 metre buffer zone on both sides of Rajakaluve. It is also stated that on the West of the property which is sought to be developed by the project proponent there are already hundreds of residential buildings existing for ten to twelve years covering Rajakaluve. It is also denied by the project proponent that project is likely to block passage of water and application has been filed by suppressing all material facts.

10. Learned counsel appearing for the appellant who has also filed his written submissions, apart from explaining about the facts, has raised an issue that there are 37 species of birds and large population of fishes one of the highest number in Bengaluru urban area, in the place where the 7th respondent has been given EC for putting up of his multi storied building and therefore according to him it is an ecologically sensitive lake and the project cannot be allowed. He has

also raised a point about Rajakaluve. Even though in original Application No. 175 of 2015 he has not raised anything about Rajakaluve, in the proposed appeal and the application filed for condoning delay in filing the said appeal, he has raised for the first time that there is a Rajakaluve between Kasavanahalli lake and Kaikondaranahalli lake which is a primary Rajakaluve connecting both lakes directly and therefore 50 metrers of buffer zone must be left on both sides and the construction should not be allowed to divert the Rajakaluve. He has also submitted that by virtue of modified EC applied for, project proponent in fact has raised the floors to further level and that cannot be allowed. He also raised objections that the original EC granted to the project proponent on 29.07.2013 itself ought not to have been granted taking note of ecologicallly sensitive area. Otherwise he has also questioned the approval of master plan by 5th respondent BDA. He has also stated that for the first time the construction is being done in wetland and therefore The Wetlands Rules, 2010 will apply and therefore EC should not have been granted. According to him, the proposed construction by the 7th respondent is a threat to Kasavanahalli and Kaikondaranahalli wetlands. Very peculiarly without even challenging the original EC granted to the project proponent on 29.07.2013 by the SEIAA, learned counsel has raised objections that the said is EC is invalid and contrary to law. Likewise he has also chosen to challenge modified EC granted to the project proponent on 08.12.2015 being contrary in terms of the extent which according to the learned counsel will vitiate the entire proceedings. Otherwise it is his case that while the EC states about the extent as reduced extent in the modified EC, the CTE granted by the KSPCB shows it is larger in extent and this contradiction is sufficient to hold that the entire project is invalid. He has also raised a point as if construction put by the project proponent is beyond the scope of clearance and therefore it raises a substantial question related to environment. Further he has submitted that the modified EC given on 08.12.2015 is an independent clearance and cannot be linked to the previous EC granted on 29.07.2013. He has ultimately submitted that even though it is true that as a public interest litigant, applicant may not be aware of the minute intricacies of the environmental disaster, appointment of an expert committee will be sufficient to prove the probable case of the applicant.

11. *Per contra* it is the submission of Mr T. R. Rajagopalan, learned Senior Counsel appearing for the project proponent in both the cases, that the prayer in Application No.175 of 2015 is in effect challenging the original clearance granted to the project proponent dated 29.07.2013 and without challenging the same, the applicants have couched the prayer in such a way to get over

the period of limitation. He has also submitted that proposed appeal itself is not maintainable as the second EC is a continuation of first EC given in 2013 and therefore the subsequent clearance cannot be independently challenged. It is his specific case that by applying for a modified EC, the project proponent has not changed the project. In fact at the time of first EC granted on 29.07.2013, there was no Rajakaluve shown in any revenue records and subsequently when the project proponent has realised through village map about the water body on enquiry wherein he found it was a secondary Rajakaluve, the project proponent has given a revised plan as per the direction of the BDA by leaving 25 metre buffer zone on both sides. Even though originally there was a proposal for diverting the Rajakaluve, the same has been given up subsequently on the basis of statutory requirement of leaving buffer zone and therefore the course of Rajakaluve has never been changed. Therefore according to the learned Senior Counsel, environmental issue regarding the allegation of change of water course is only invented falsely for the reasons best known to the applicants. He has also stated that records clearly show that there has not been any other lake etc. It is his submission that applicant having known about first EC dated 29.07.2013, has chosen to file Application No.175 of 2015 only on 16.10.2015 and therefore Application No.175 of 2015 which in effect challenges the validity of EC cannot be entertained. He has also raised an issue that in both the applications there ais no particular or specific issue of environment raised by the applicant except the Rajakaluve which was not even raised in the original application but admittedly the same is not affected by the project of the project proponent. According to the learned Senior Counsel, there are absolutely no arguable points either on environment or on law in both the cases and hence are liable to be dismissed. He would however submit that the project proponent will not deviate from any one of the conditions stipulated in EC and in the event of such violation; it is always open to the authorities concerned to take appropriate action.

12. Likewise Ms. J Anandavalli, the learned counsel appearing for the BDA while reiterating the points raised in the reply submits that legally originally industrial (hi-tech) sensitive zone was changed into residential zone by the BDA by virtue of the powers conferred under the Karnataka Town and Country Planning Act, 1961. She has also submitted that as per the master plan, the Rajakaluve is a secondary Rajakaluve and therefore as per the statutory requirements, 25 metre buffer zone has to be left out and it was only after the project proponent has executed registered relinquishment deed in respect of said area, the plan was sanctioned and EC came to be granted.

Therefore according to her there are no illegalities or infirmities on the part of official respondents who acted strictly in accordance with law and records. She has also submitted that the applicants have not even raised any question relating to environment much less substantial question. Likewise Mr T. V Shekhar, learned counsel appearing for BBMP, 6th respondent in Application No.175 of 2015, submits that the said respondent being local plan sanctioning authority, has acted strictly in accordance with law and only after the master plan was approved by the BDA. This has also been the contention raised by the other learned counsel including the learned counsel appearing for State of Karnataka and learned counsel appearing for MoEF&CC Ms Saraswathy. The learned counsel appearing for KSPCB, Mr. Thirunavukarasu has submitted that the KSPCB has originally granted CTE on 09.05.2013 and fresh CTE on 02.02.2015 by adhering to various provisions of the Environment (Protection) Act, 1986 as well as the Water Act, 1974 and there is no illegality in it. He has also reiterated that applicants have not raised any environmental issue. Learned counsel appearing for SEIAA at our direction, has also produced original files relating to the proceedings of SEIAA.

13. After hearing the learned counsel appearing for applicants as well as all the respondents elaborately and having gone through the pleadings and other documents filed by the parties including original documents filed by SEIAA, the following issues arise for consideration in these two matters namely:

1. *Whether the 7th respondent should be restrained from proceeding with the construction pending further investigation?*
2. *Whether the 7th respondent has made encroachment in Kasavanahalli and Kaikondaranahalli lakes and caused any environmental damage by executing construction activities?*
3. *Whether the reliefs claimed in Application No.175 of 2015 by applicants are maintainable without challenging the EC granted by SEIAA dated 29.07.2013?*
4. *Whether the applicant in M.A No.28 of 2016 in Appeal No._ of 2016 has shown any reasonable cause for delay in filing the appeal against the modified EC granted to the project proponent by SEIAA dated 08.12.2015 and incidentally whether challenge of such modified EC without questioning original EC is valid?*

14. Considering the facts and circumstances of the case, we propose to take up issue No. 1 to 3 jointly.

1. *Whether the 7th respondent should be restrained from proceeding with the construction pending further investigation?*
2. *Whether the 7th respondent has made encroachment in Kasavanahalli and Kaikondaranahalli lakes and caused any environmental damage by executing construction activities?*
3. *Whether the reliefs claimed in Application No.175 of 2015 by applicants are maintainable without challenging the EC granted by SEIAA dated 29.07.2013?*

Before adverting to above said fact, there are certain admitted facts in this case which are to be narrated. Admittedly as it is also seen from the files placed by learned counsel appearing for SEIAA, project proponent namely the 7th respondent in Application No.175 of 2015 and 2nd respondent in M.A No.28 of 2016 has applied for EC on 03.01.2013 to SIEAA in Form-I, IA and conceptual plan seeking for approval of construction of residential apartments on a plot of area of 64,089.81 sq.meters with a total built up area of 1, 64, 390.85 sq.metres and proposed construction consists of 870 units with 21 towers. Towers 1 to 3 & 16 to 21 comprise in Basement + Ground + 5 Upper Floors; Towers 4 to 9 comprise of Basement + Ground + 14 Upper Floors; Towers 10 to 15 comprise Basement+Ground+4 Upper Floors and a Club House to have Basement+Ground+1 Floor with total parking space proposed for 1198 cars. The total water consumption is 643 KLD (fresh+ recycled water). The total waste water discharge is 513 KLD. It was also proposed to construct a STP with a capacity of 525 KLD and the project cost being Rs. 321 crores. SEAC of SEIAA haS considered the proposal and Terms of Reference (hereinafter called 'ToR') was issued on 11.03.2013 for conducting EIA study. The EIA was conducted by *M/s. Aqua Tech Enviro Engineers, Bengaluru.* Thereafter based on the information submitted by the project proponent and presentation made along with the consultants, SEAC examined the proposal in its meeting held on 14/15.02.2013 and 03.06.2013 and has recommended issuance of EC. The SEIAA after considering the proposal, documents and recommendations of SEAC in its meeting held on 22.07.2013 has accorded EC to the project proponent communicating the same on 29.07.2013. The EC granted on 29.07.2013 which is not admittedly challenged in these cases, contains specific conditions in construction and operational phase apart from the general conditions. The specific conditions in construction phase include that the project proponent shall maintain and operate the

common infrastructure facilities created including STP and solid waste management facility for a period of at least 5 years after commissioning the project. The specific condition in operational phase imposes installation of STP of total capacity of 525 KLD. That apart, project proponent should develop a minimum of 36.38% of plot area i.e., minimum 21,845.45 sq.metre area for green belt and plant with heavy foliage indigenous tree species such as *Mahagony, Honge, Neem, Akash Mallige, Kadamba, Ficus,* and *Ashoka* etc. at an espasement of 3m×3m i.e. 1111 plants per hectare. On the face of record, we cannot come to a conclusion that original EC granted to the project proponent dated 29.07.2013 is without application of mind. Further it is relevant to note that nowhere in the conditions in original EC dated 29.07.2013 there is anything mentioned about Rajakaluve or wetland.

15. It is relevant to note that not one of the present contentions raised by the learned counsel have been pleaded by the Applicants. It is settled law that unless a fact is specifically pleaded, there will be no chance for the other side to retaliate or disprove the allegations. Eventhough this Tribunal having been constituted for a specific purpose, will take a strict view about the non-compliance of pollution norms, elementary principle of pleading and proving continues to be followed in the interest of maintaining of judicial discipline. Mere bald and vague allegations made by the applicants and then calling upon the Tribunal to constitute an expert committee to substantiate the case of applicants is unknown to any jurisprudence and environmental jurisprudence is no exception to that.

16. The project proponent who was granted EC on 29.07.2013 has made a proposal on 13.11.2014 and 17.03.2015 to the SEIAA, Karnataka seeking prior EC as a modification project in Survey Nos 35, 41, 43, 44, 45, 46, 58, 59, 60 and 61 at Kasavanahalli village, Bengaluru East Taluk, Bengaluru. While in the original Form-I filed in the year 2013 in column No. 1.22 to the question '*stream crossing?*', the project proponent has stated '*NA'* and *'NO'*, in the revised Form-I in clause 1.22, the project proponent has stated *'YES'* with details stating as *" in the proposed site there is a valley and a minor nala passing through".* Sufficient space on either side, as per local authority (BBMP) regulations has been maintained to protect its structures as it is seen in the original records produced by learned counsel appearing for SEIAA. Under the modified proposal in Form-I, project is stated to be of residential apartments of 17 towers. Tower

1 consists of Basement + Ground + 19 Upper Floors, Towers 2, 3 and 4 consist of 2 Basements + Ground + 21 upper floors. On top of Tower 3, helipad is proposed. Tower 5 consists of 2 Basements + Ground + 19 Upper Floors. Towers 6 to 17 consist of Ground + 6 Upper Floors with terrace , also common amenities like swimming pools, service rooms, indoor games, club house, multipurpose hall, children play area are proposed in the apartment complex. The upper basement area, lower basement, basement (parking) is meant for car parking which can accommodate 1237 cars. Over all there are 810 flats in the building proposal. After considering the said modified proposal, the SEIAA has issued EC in favour of project proponent on 08.12.2015 in which it is clearly stated by referring to the earlier EC granted on 29.07.2013 as it is seen in Para 2 of the EC granted by SEIAA dated 08.12.2015. The modified proposal was considered by SEAC in its meeting held on 7/8/9.10.2015 and recommended for issue of EC for the proposed modification of residential apartments on a plot area of 62,927.74 sq.metres with a reduction of 1112.07 sq.metres area from the earlier. The revised EC also shows that total built up area is 1, 63, 339.63 sq.metres with reduction by1051.22 sq.metre from the earlier. Further it is stated that proposed construction under modification consists of 810 numbers of residential units in 17 towers as against earlier 870 units in 21 towers. It is also stated that the revised project was considered by SEAC on 31.03.2015 and ToR was issued for conducting EIA study which was conducted and report was submitted by Sri. B.M Manjunath, Bengaluru and based on the said information, SEAC has examined the proposal on 7/8/9.10.2015 and recommended for EC. The EC dated 08.12.2015 also refers to certain action taken against project proponent for violation. Further in the EC granted on 08.12.2015, in the specific condition in the construction area, there is a special clause 46 which states:

> *"existing valleys, water bodies, canals and Rajakaluve and other drainages and water bound structures should be retained unaltered with due buffer zone as applicable".*

17. In so far as it relates to the water body Rajakaluve which is stated to be a water body situated in between Kasavanahalli and Kaikondaranahalli lakes, in the original Application No.175 of 2015 filed by the applicants, there is nothing about primary and secondary Rajakaluve mentioned. It was only after filing of MA. No.28 of 2016 for filing appeal against the modified EC granted on 08.12.2015, for the first time the applicant therein has chosen to distinguish between the primary Rajakaluve and secondary Rajakaluve. The learned counsel appearing for applicants would vehemently contend that this water body connecting the lakes on two sides

namely Kasavanahalli and Kaikondaranahalli should be treated as a primary Rajakaluve since according to him, it straight away connects two lakes and therefore it should be termed as primary Rajakaluve. Apart from the fact that this contention is not supported by any other evidence or any documents, a reference to the comprehensive development plan prepared by the BDA shows that the Rajakaluve is only connecting the tributaries which in turn joins the lake. That apart the BDA in the commencement certificate issued to the project proponent dated 05.02.2013 has clearly stated in Column No.13 that the canal is a secondary canal and a minimum of 25 metre buffer zone must be left out on both sides. The said clause 13 of the commencement certificate issued by BDA is as follows:

> *13. Secondary canal buffer of minimum 25.0 M on both sides from the middle of the existing canal identified in the canal buffer and village and survey maps marked in the RMP-2015 in the proposed region shall be maintained."*

The said proceedings of the BDA further state that while referring to Sensitive Zone Sub-Committee meeting of the BDA authority stating that:

> *"it was decided to exclude proposed region from sensitive zone, subject to conditions of reserving secondary canal, buffer of minimum 25 M on both the sides from the middle of existing canal identified in the canal buffer and village and survey marked in RMP-2015 in the proposed region".*

When the statutory authority like BDA which has exercised its statutory functions as per Section 14(A) (3) of the Karnataka Town & Country Planning Act, 1961, has identified the canal as a secondary canal and directing the project proponent to leave 25 metre on both sides as a buffer zone; it is not known as to how, the learned counsel appearing for applicant is insisting that canal is to be treated as a primary Rajakaluve. It appears only in the revised master plan prepared by the BDA that the drains have been categorised into 3 types namely; primary, secondary and tertiary and the said drains will have buffer of 50, 25 and 15 metres respectively measured from centre of drains on either side. The said master plan, 2015 also states that this classification has been used for drains newly identified while finalising the RMP-2015. That has been stated by BDA in the reply also. In any event if in exercise of the powers conferred under the statue, if the authority differentiates the canals, it is not for this Tribunal to go into the corrections of the same which is also not within the jurisdiction of the Tribunal.

18. In so far as it relates to the allegation of encroachments, one thing is clear that originally the disputed land was forming part of industrial (hi-tech) zone and by exercising the power under Section 14(A) (3) of the Karnataka Town & Country Planning Act, 1961; the area has been

converted into residential area. The BDA has clearly stated in the reply that there are no encroachments in the Rajakaluve between Kasavanahalli and Kaikondaranahalli. It is also stated that there is no shifting of Rajakaluve and it is retained in the same manner as it exists. This has been the categorical stand of all the respondents including the project proponent and the conditions under modified EC dated 08.12.2015 also contemplate the same directing the project proponent to preserve water body. In the absence of any acceptable evidence, it is not possible to accept the contentions of the learned counsel appearing for the applicants that there has been any encroachment into the water bodies by the project proponent. In any event in future also the project proponent shall not disturb the course of Rajakaluve as undertaken by him and in the event of any breach, it will be always open to the SEIAA to take appropriate action against project proponent as per the conditions of the EC which even includes the power to the cancel the EC. It is admitted by the applicants themselves that the project proponent who has originally executed a registered relinquishment deed dated 29.04.2013 which relates to the park and open space shown in the development plan to the extent of 6161.21 sq.metres, has subsequently executed another relinquishment rectification deed on 02.06.2015 in favour of BDA by releasing another extent of 3991.82 sq.metre and 1680.29 sq.metres land. It is also the specific case of SEIAA that it has not approved any diversion of any nala or Rajakaluve. In these circumstances, we are unable to accept the contention raised on behalf of the applicants that either the course of Rajakaluve have been altered by project proponent or project proponent has made any encroachment in any water body/even committed any breach of condition of EC dated 29.07.2013

19. Further, by virtue of modified plan, it is not as if the number of flats proposed has been increased from EC dated 29.07.2013 to 08.12.2015. As stated above and on verification of original documents submitted by learned counsel appearing for SEIAA, in fact there has been a reduction of number of flats and also extent of the built up area in the modified EC and therefore it cannot be said that there has been any violation which substantially affects the original EC granted to the project proponent on 29.07.2013. It goes without saying that the project proponent is bound to follow the terms and conditions of the original EC dated 29.07.2013 and modified EC dated 08.12.2015 apart from the consent issued by KSPCB. Merely because in the CTE, KSPCB has given some other extent of built-up area which is not in consonance with the EC and in absence of any concrete evidence adduced by the applicants, we cannot presume that there has

been any deviation in the construction made by project proponent. However it is again reiterated that in such event the authorities have to take appropriate action. It is not as if applicants are left in lurch in such cases of violation. They can always resort to legal remedies in cases of such violation as per law. In the absence of any materials placed before us in respect of the destruction of water body/ encroachment made by the project proponent resulting in environment disaster and in the light of categorical stand taken by the official respondents like BDA, KSPCB we are unable to accept the contention that 7th respondent should not be permitted to proceed with construction. Further, as 7th respondent is having a valid EC as on date both original EC dated 29.07.2013 and modified EC dated 08.12.2015 which is in continuation of original EC, the balance of convenience and the interest of environment does not warrant interference with the project of the 7th respondent. The reliance made by the learned counsel appearing for Applicants on judgement of Hon'ble High Court of Rajasthan decided in Civil Writ (PIL) petition No. 6039/2011 dated 17.05.2012 is not applicable to the facts of the present case for the reason that admittedly the present place in dispute is not a Ramsar Convention site and steps have been taken in this case to protect natural flow of nala. In *sterilite industries (Ltd.) & ors Vs. Union of India* reported in 2013(4) SCC 575 while dealing with judicial review of EC, Hon'ble Supreme Court has held that when once EIA has been made by the expert authority courts cannot substitute their view under the principle of judicial review unless there are any illegality, irregularity or procedural impropriety in granting such permission. However Supreme Court has further held in that case that if after setting up of plant, plant begins / continues to pollute environment, Fundamental Right under Article 21of Constitution can always be invoked. Supreme Court has observed as follows:

> *" 31.The High Court has noticed some decisions of this Court on Sustainable Development, Precautionary and Polluter Pays Principles and Public Trust Doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well recognized principles of judicial review as has been held by a three Judge Bench of this Court in Lafarge Umiam Mining (P) Ltd. v. Union of India & Others [(2011) 7 SCC 338 at 380]. To quote Environmental Law edited by David Woolley QC, John Pugh- Smith, Richard Langham and William Upton, Oxford University Press:*
>
> > *"The specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely on the grounds of illegality, irrationality, and procedural impropriety."*
>
> *Thus, if the environmental clearance granted by the competent authority is clearly outside the powers given to it by the Environment (Protection) Act,*

1986, the Environment (Protection) Rules, 1986 or the notifications issued there under, the High Court could quash the environmental clearance on the ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would suffer from Wednesbury unreasonableness and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.

32. Where, however, the challenge to the environmental clearance is on the ground of procedural impropriety, the High Court could quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. As stated in Environmental Law edited by David Woolley QC, John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> *"It will often not be enough to show that there has been a procedural breach. Most of the procedural requirements are found in the regulations made under primary legislation. There has been much debate in the courts about whether a breach of regulations is mandatory or directory, but in the end the crucial point which has to be considered in any given case is what the particular provision was designed to achieve."*

As we have noticed, when the plant of the appellant-company was granted environmental clearance, the notification dated 27.01.1994 did not provide for mandatory public hearing. The Explanatory Note issued by the Central Government on the notification dated 27.01.1994 also made it clear that the project proponents may furnish rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project Comprehensive EIA report was not a must. In the absence of a mandatory requirement in the procedure laid down under the scheme under the Environment (Protection) Act, 1986 at the relevant time requiring a mandatory public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety.

33. Coming now to the ground of irrationality argued so vehemently by Mr. V. Prakash, we find that no materials have been produced before us to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision. As we have already noticed, in Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petition Nos.15501 to 15503 of 1996, it has been stated that the Ministry of Environment and Forests have accorded environmental clearance after detailed examination of rapid EIA/EMP, filled in Questionnaire for industrial projects, NOC from State Pollution Control Board and Risk Analysis, and that the project was examined as per the procedure laid down in the EIA notification dated 27.01.1994 (as amended on 04.05.1994) and only thereafter the project was accorded approval on 16.01.1995. No material has been placed before us to show that the decision of the Ministry of Environment and Forests to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

34. In Belize Alliance of Conservation Non-governmental Organizations v. The Department of the Environment and Belize Electric Company Limited (supra) cited by Mr. Prakash, the Lords of the Judicial Committee of the Privy Council have quoted with approval the following words of Linden JA with reference to the Canadian legislation in Bow Valley Naturalists Society v. Minister of Canadian Heritage [2001] 2 FC 461 at 494:

> *"The Court must ensure that the steps in the Act are followed, but it must defer to the responsible authorities in their substantive determinations as to the scope of the project, the extent of the screening and the assessment of the cumulative effects in the light of the mitigating factors proposed. It is not for the judges to decide what projects are to be authorized but, as long as they follow the statutory process, it is for the responsible authorities."*

The aforesaid passage will make it clear that it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued there under to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review".

20. There is one other issue as to whether the relief claimed in the Application No. 175 of 2015 can be granted. Admittedly the project proponent has originally obtained EC on 29.07.2013. It is not the case of applicant that project proponent has proceeded to construct before the said date. However before the date of making proposal by the project proponent for the modified EC, there appeared to be some deviation for which action has been initiated under the Environment (Protection) Act, 1986. But admittedly on a subsequent date namely on 08.12.2015 after appraisal of the entire issues, the SEIAA on recommendations of SEAC has granted EC with various conditions. In the absence of challenging of the original EC granted on 29.07.2013 within the period of limitation prescribed under the NGT Act, 2010, we are of the considered view that the present prayer in application No.175 of 2015 is invented only to get over difficulties relating to period of limitation. The reliance made on a judgement of a Division Bench of Hon'ble Madras High Court in *Arun AlexanderLaxman Vs. A.P. Vedavalli* reported in 2007(4) CTC 449 is relevant in the sense that sufficient cause to be shown in condoning delay must be tested based on fact that whether applicant has acted in due diligence. Applying the test laid down by the Division Bench to the facts of the present case, we have no hesitation to hold that applicants having knowledge of the original EC in 2013 have not acted with due diligence. While construing the meaning of term in clause 9 of EIA Notification, 'extension' and 'validity' the Western Zone Bench of NGT in Appeal No.28 of 2014 in the judgement dated 26.05.2015 has stated that even though the terms 'extension' and 'validity' are separate activity, it is obvious to be linked with earlier EC; however that was a case where original period of 5 years of EC was extended to a further period of 5 years. For purpose of understanding the meaning of two words as stated above, it is relevant to extract the Para 12 of the said judgement which runs as follows:

12. The conjoint reading of the phrase 'extension of validity' based on the simple construction would reveal that such extension will be necessarily a separate activity though linked with earlier EC and therefore, we are of the opinion that the extension of validity is a separate activity and process under the provision of EIA Notification 2006 through it is linked with the earlier EC. This would also be cleared from the provisions of the EIA Notification itself wherein such validity had been prescribed for the EC under the Notification. The Legislature has thought it prudent and necessary to adopt the 'precautionary approach' by not granting perpetual validity for the EC but to restrict such validity a period by keeping a 'proviso' for extension of the same, in order to ensure that the environmental compliance are made by the project proponent. It is clear from the language of the Notification that certain changes/modifications are expected over certain time and therefore, the clause 9 of NGT Act, 2010 gives a liberty to the project proponent to file updated information. The legislature has also kept a provision which we think is essentially based on 'precautionary principal' to refer the matter to SEAC by the SEIAA in such cases. However, at the same time as discussed above, though 'extension of validity' is a separate activity/process, it is obviously linked with earlier EC. We are of the opinion that such 'extension of validity' can be challenged before the Tribunal but at the same time it will not be proper and appropriate to open up a window of opportunity and litigation which will directly or indirectly challenge the original EC. The challenge to such 'extension of validity' needs to be restricted only to such process wherein extension is considered and granted, nothing more and nothing less. This is necessary to protect the project proponent from the delayed litigations when certain investments have been made by the project proponent and substantial development might have been done. At the same time, as explained above, the environmental clearance itself is all pervasive document which imposes specific and general conditions during execution and operation the project, which project proponent is expected to adhere to, in the entire life cycle of the project.

We are of the firm view that in the presence of a valid EC it is not possible for this Tribunal to grant any restraint order against the project proponent and therefore prayer in Application No.175 of 2015 is not maintainable. Looking into any angle, we are unable to grant any relief to the applicants in respect to any one of the issues framed above. Accordingly issues 1, 2 and 3 are answered against the applicants.

21. Issue No.4

Whether the Applicant in M.A No.28 of 2016 in Appeal No._ of 2016 has shown any reasonable cause for delay in filing the appeal against the modified EC granted to the project proponent by SEIAA dated 08.12.2015 and incidentally whether challenge of such modified EC without questioning original EC is valid?

As we have stated earlier, a reading of the modified EC granted to project proponent dated 08.12.2015 makes it very clear that the SEIAA has taken note of the original EC granted on 29.07.2013 as it is seen in Para 2 of EC dated 08.12.2015 which is stated as follows:

2. "It is inter-alia noted that EC has been issued by SEIAA, Karnataka to this project vide letter No. SEIA 3CON 2013 dated 29.07.2013 for construction of residential apartment project on a plot area of 64,039.81 Sq.M. the project was approved for a built up area of 1,64,390.85 Sq.M with 870 units in 21 Towers with Towers 1 to 3 &16 to 21 comprise in Basement + Ground + 5 upper floors; tower 4 to 9 comprises of Basement + Ground + 14 upper floors; tower 10 to 15 comprises Basement+Ground+4 upper floors and a club house to have Basement+Ground+1 upper floor"

Reading of the said EC clearly shows that there is no fresh project by the project proponent and it was only a modification of the same project which was applied for. In this regard, we have already elicited above from the original record submitted by the learned counsel appearing for SEIAA wherein in the proposal given for modified EC, the project proponent has revealed about knowledge of a water canal and in order to leave sufficient space as a buffer zone on both sides of water canal which has been declared by the competent authority namely BDA as a secondary Rajakaluve and therefore 25 metre on either side of the canal directed to be left out as free land. It is this fact which has lead project proponent to apply for modification. The submission made by the learned Senior Counsel for the project proponent in this regard is plausible. In fact it is stated in modified EC dated 08.12.2015 that one entire block which was in existence in original EC has been left out in order to protect Rajakaluve and leaving buffer zone on both sides and that has necessitated to propose for few more stories but the fact remains as it is seen from the original record that number of flats in modified proposal has come down to 810 as against the 870 in the original EC. This probabalise as submitted by the learned Senior Counsel appearing for the project proponent that the project proponent applied for the modified EC voluntarily. In any event we are unable to accept the stand taken by learned counsel appearing for applicants that modified EC is independent of the original EC. The cause of action has arisen originally when EC was granted on 29.07.2013. It is not the case of applicants who are stated to be residents of same area that they are not aware of construction of the project proponent from 2013 namely the cause of action first arose. In such circumstances the reasons given for condoning delay in filing the appeal against the modified EC dated 08.12.2015 to get some technical inputs is not an acceptable reason at all. In any event we are of the considered view that without questioning the original EC dated 29.07.2013, it is not open to the proposed Appellant to question the modified EC especially when it is not even the case of the proposed appellant who is applicant in M.A that there has been any violation of any of the conditions of EC granted to the project proponent on 08.12.2015 except taking a new stand that it should be treated as a primary Rajakaluve and leaving of 50 metre buffer

zone is necessary. As stated above when the authorities competent in law to take a decision on the nature of Rajakaluve and in fact by exercising the statutory powers when they have taken a decision that it is a secondary Rajakaluve there is nothing to presume that the said decision is not valid. Incidentally that is not within the jurisdiction of this Tribunal too. In such view of the matter the application to condone delay in filing appeal as well as the proposed appeal are not maintainable and application is liable to be rejected as no sufficient reason has been shown for condoning the delay apart from the merits as stated above. Issue number 4 is therefore answered against the applicant in MA No.28 of 2016 and the proposed appellant.

22. In view of the reasons stated above, the Application No.175 of 2016 is liable to be rejected as not maintainable and accordingly the same is dismissed. For the reasons stated above, M.A No.28 of 2016 in Appeal No.- of 2016 as well as the proposed Appeal also stand dismissed. There shall be no order as to cost.

Justice Dr.P.Jyothimani
(Judicial Member)

Shri. P. S. Rao
(Expert Member)

Chennai
26th April 2016