BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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. Raj Panjwani, Sr. Adv. with Mr. Rishabh Parikh, Adv. for Applicant

Mr. Devraj Ashok, Adv. for State of Karnataka for Respondent No. 1

Mr. Attin Shankar Rastogi, Adv. for Respondent No. 2

Mr. B. R. Srinivasa Gowda, Adv. for Respondent No. 7

Ms. Shweta S. Parihar and Mr. Ankur S. Kulkarni, Adv. for Respondent No. 8

Mr. Shekhar G. Devasa, Mr. D. Mahesh,and Mr. Manish Tiwari, Advs. For Respondent No. 9

Mr. Raju Ramachandran, Sr. Adv., Mr. Devashish Bharuka, Mr. Suraj Govindraj and Mr. Vaibhav Niti, Advs. For Respondent No. 10

Mr. Praveen Sehrawart and Mr. Saransh Jain, Advs. For Respondent No.11 and 12

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice M.S. Nambiar, (Judicial Member)
Hon'ble Dr. D.K. Agrawal (Expert Member)
Hon'ble Professor A.R. Yousuf (Expert Member)
Hon'ble Mr. Bikram Singh Sajwan, (Expert Member)

Reserved on:
Pronounced on: May 04, 2016

---

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)

1. The three applicants filed the application with a prayer to issue direction 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 No. 2 and 6 respectively, to take coercive and punitive action including restoration of ecological sensitive land and that the valley land is to be maintained as a sensitive area with no development of any sort to keep the ecologically balance of the area undisturbed, were disposed, vide the common Judgment dated 07th May, 2015, issuing 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.*

2. Respondent No. 9 and 10 challenged the Judgment before the Hon'ble Supreme Court of India in Civil Appeal No. 4829 of 2014 and 4832 of 2015 respectively. The appeals were disposed by the Hon'ble Supreme Court of India on 20th May, 2015 holding that it would be more appropriate for the Appellants to file application before the Tribunal with a prayer to recall the order and decide afresh on merits after hearing the parties, as the Tribunal knows better as to what transpired at the time of hearing. Their Lordship held as follows:-

> *"One of the main contentions raised by the appellants in these appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs.117.35 crores against original respondent no.9 (the appellant in C.A.No.4832 of 2015) and Rs.22.5 crores against Original respondent No.10 (the appellant in C.A.No. 4829/2015) is imposed. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.*
>
> *With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.*
>
> *The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty.*

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

3. The Respondent No. 9 and 10 therein filed M.A. No. 596 of 2015 and M.A. No. 603 of 2015 respectively before the Tribunal. Relevant prayer in M.A. No. 603 of 2015 was to recall the Judgment dated 07th May, 2015 "to the limited extent of findings returned and direction issued under issue no. 5 as framed in para 19 of the Judgment and to grant an opportunity of hearing to Respondent No. 10 on the merits of the Original Application. 'The prayer in M.A. 596 of 2015 was also to recall the order dated 07th May, 2015, 'reconsidering and review the aforesaid order after hearing the matter afresh in the manner indicated and observations made in the order dated 20th May, 2015 by the Hon'ble Supreme Court of India in Civil Appeal No. 4832 of 2015.' The crux of the case of Respondent No. 9 and 10 in their applications is that arguments were addressed only in respect of maintainability and limitation and not on the reliefs granted. The grievance of Respondent No. 9 and 10 was that they could not address arguments either on, their liability to pay the environmental compensation or the quantum of the compensation, if any, to be awarded. Both the applications were disposed vide order dated 06th April, 2016 as follows:-

"Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme

Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf."

4. Karnataka Industrial Area Development Board (for short 'KIADB'), the Respondent No. 7, allotted the land to Respondent No. 9 and 10 vide Notification dated 23rd April, 2004 and 07th May, 2004 respectively 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'), the respondent no. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. According to the Applicant the Revenue Map in respect of properties as referred in the land lease Agreements has multiple *Rajakaluves*. According to the Applicant the development projects in question are on the catchment and wetland areas which feed the *Rajakaluves*, which in turn drain rain water into Bellandur Lake. It was alleged that the project would thus encroach two *Rajakaluves* of 1.38 acres and 1.23 acres each. The State Level Expert Appraisal Committee (for short the 'SEAC') in its various meetings examined the project. It required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), Respondent No. 5. It 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. The Applicant would allege 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 provided with the condition that Environmental Clearance shall be obtained from the Competent Authority and no construction shall be commenced until such clearance was granted.

5. The case is that Respondent No. 9 has violated such conditions and commenced construction of the project. There was also violation of the stipulations in relation to buffer zone and construction over *Rajakaluves* was commenced over the ecologically sensitive area of the Lake catchment area and valley, in utter disregard to the statutory compliances. The conversion of the 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*. The Respondent Nos. 9 and 10 started leveling the land by filling it with debris, causing damage to the drains. 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 and it affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture also depends on the Bellandur Lake. 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). Though in its meeting dated 29th September, 2012, State Environment Impact Assessment Authority decided to close the file pertaining to Respondent No. 9, for non-submission of requisite information and rejected the application in November, 2012; Respondent No. 10 commenced construction on the project in full swing. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A. T. Ramaswamy 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 now are mere sewage channels. The Hon'ble High Court appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil in Writ Petition No. 817/2008 (Environment

Support Group and Another Vs. State of Karnataka) to suggest immediate remedial action 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 which recommended to maintain good water surface in Bellandur tank and also to ensure that the water is not polluted. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas. The Applicant sought the reliefs contending 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.

6. The Respondent No. 9 in the reply contended that the 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 centers and other allied infrastructure within a single compound. This

respondent had submitted the proposal to establish such Information Technology Park and other facilities and requested the State Government to allot land for the project. It was considered in the 78th High Level Committee meeting held on 21st June, 2000 and it 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 and 4 lakh litres of water/day. The lands for the project were initially notified by the BDA, later on the lands were de-notified, vide Notification dated 10th February, 2004. Subsequently, the lands were allotted to the respondent vide letter dated 28th June, 2007. Considering the overall development of the State, respondents 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 Mtrs. The Project was conceived as a zero waste discharge project. The project is located at the Southern side of the Bellandur Lake. Towards the North, adjacent to the Project site lies vast stretch of lands belonging to the Defence. Towards the East, which is completely developed lies, the Project of Respondent No. 10 and another developer is also developing a project on the western side. The Respondent No. 9 obtained sanction plan on 4th July, 2007 which was being renewed from time to time. They obtained NOC from Airport Authority of India on 09th April, 2010, certificate from Dr. Ambedkar Institute of Technology on 15th April, 2010 and from Bharat Sanchar Nigam Ltd (BSNL) on 16th April, 2010. Bangalore Water Supply and

Sewerage Board (for short the 'BWSSB'), issued NOC on 26th April, 2011 for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited granted NOC for arranging power supply to the proposed residential and commercial building. Environmental Clearance was granted by State Environment Impact Assessment Authority; vide communication dated 17th February, 2012. NOC was issued by Director General of Police on 04th September, 2012. After grant of the Environmental Clearance the same was published in the leading newspapers "Kannada Prabha" and the "Indian Express" on 12th and 14th March, 2012 respectively.

7. The Respondent No. 9 later on modified the building plan which was approved by Respondent No. 7, vide letter dated 30th August, 2012, which was valid up to 10th August, 2014. 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 constructions were raised in accordance with the plans and conditions of the Environmental Clearance and consent orders. The Respondent No. 9 has not violated any of the conditions and has not caused any adverse impact on the ecology and environment. The allegation covering and blocking the Rajakaluves, drying the wetland and raising of the constructions thereupon adversely affecting the lake, are specifically disputed and denied. It was contended that the Respondent No. 9 has spent Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, etc. and they have availed financial assistance from

various banks and financial institutions. 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), raising allegation that project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court did not grant any interim order as prayed. It is still pending. Meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BBMP') issued a show cause notice to respondents. The Respondent No. 9 challenged the same before the Hon'ble High Court in Writ Petition No. 366-367 of 2014 and 530-625/2014. The Hon'ble High Court stayed the operation of the show cause notice. Another notice was also issued by Respondent No. 7 directing stoppage of work on 02nd January, 2014. It was challenged by the Respondent No. 9 in Writ Petition No. 792 of 2014 and vide order dated 07th January, 2014 operation of the stay order was also stayed. In view of the pendency of the Writ Petition before the Hon'ble High Court the original application is not maintainable. They have also contended that the petition filed before the Tribunal is barred by time and as the Environmental Clearance granted was published in the newspaper on 03rd June, 2013. There is no jurisdiction to condone the delay. It was also contended that the Applicants have suppressed the facts and made mis-representation of material facts and therefore they are not entitled for any relief.

8. The Respondent No. 10 has also raised a similar plea with regard to the maintainability of the Application. It was also contended that the conversion of land use from 'Protected Zone' to 'Residential Sensitive' in the Master Plan does not fall within the jurisdiction of the Tribunal. Respondent No. 9 submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25 acres of land around the outer ring road in Bangalore. The clearance certificate was issued on 27th March, 2004. Respondent No. 10 submitted a revised proposal for fresh clearance in respect of the same project on 31st August, 2007. The revised proposal was with the investment of Rs 179.22 crores. The State High Level Committee had cleared the project and communicated to the respondent on 25th January, 2008. The 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 of the respondent seeking sanction of development and building plan in respect of the properties was allowed and as directed by Respondent No. 7, respondent deposited Rs 1,28,56,830/-. Respondent No. 10 also obtained clearance from various authorities including NOC from Airport Services Centre, Hindustan Aeronautics Limited on 17th March, 2010, NOC from Bharat Shanchar Nigam Ltd on 30th March, 2011, NOC was obtained from Karnataka Power Transmission Corporation Ltd on 22nd May, 2012, NOC from Karnataka State Fire & Emergency Services on 03rd August, 2012, NOC certificate from Bangalore Water Supply & Sewerage Board,

Karnataka State Pollution Control Board and State Level Environment Impact Assessment Authority were respectively obtained on 04th April, 2013, 03rd June, 2013 and 30th September, 2013.

9. The Hon'ble High Court of Karnataka did not grant any interim relief in Writ Petition No. 18119 of 2014 earlier. The respondent averred that they are entitled to develop the projects, having received all clearances. The Bellandur Lake does not support fishing activity and the source of water is for domestic purpose. No agricultural activity is carried out in such area. There is no wetland existing on the site in question. The project carried out by Respondent No. 10 in the property belonging to it has no adverse impact on environment. The ENVIS report relied upon by the applicant were prepared by persons interested in opposing the project. In any case, the said report stood superseded by the Environmental Clearance granted on 30th September, 2013 wherein Respondent No. 3 was accorded consent, after considering all the actual facts and on due application of mind. Other respondents have also raised their respective contentions.

10. On these pleadings the following issues were formulated for consideration and determination in the original judgment 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?

11. Question No. 1, Whether the application filed by the applicants is barred by time and thus, not maintainable, was answered that it is not barred by time and the application is maintainable. Question No. 2: whether the petition as framed and reliefs claimed therein, disclose a cause of action and whether the Tribunal has jurisdiction to entertain and decide the application was answered that the application does disclose a cause of action which squarely falls

within the ambit of Section 14 and 15 of National Green Tribunal, Act. Question No. 3: Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata* was answered as it is not barred. Question No. 4: Whether the application is maintainable in view of the pendency of the application before the Hon'ble High Court of Karnataka was answered that the culmination of proceedings before the Tribunal into a judgment would not offend the principle of judicial proprietary, because of the pendency of the writ petition before the Hon'ble High Court and that the Tribunal should entertain and decide the application, despite the pendency of the Application before the Hon'ble High Court.

12. Though these findings rendered in the Judgment were challenged before the Hon'ble Supreme Court of India, Respondent Nos. 9 & 10 have no case that they were not heard on these questions. In fact their very case is that they addressed arguments only on these issues. Moreover in the Applications M.A. No. 596 of 2015 and M.A. No. 603 of 2015 respondents 9 and 10 did not have a case that further arguments need to be addressed on these issues. On the facts and materials placed before us, we find no reason to take a different view on these questions. Therefore, we reiterate the earlier findings on these questions.

13. The proposed Mixed Use Development Project (MUDP) is located at Agara Village and Jakkasandra Villages of BEGUR/OBLI, Bangalore, South. Special Economic Zone (SEZ) is located between

Agara Lake and Bellandur Lake. The Mixed Use Development Project is proposed along Sarajapur road in the catchment of lakes Bellandur and Agara lakes. Agara lake is located at the other side of 40 Meters vide road, while Bellandur lake is 50 Meters away from the project boundary. Rajakaluves (natural drain) is running of along the project site. Proposal envisages 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 sq.m. 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 based on the materials and the records the cumulative adverse effect of the activities undertaken by the Respondents were summed up in the main Judgment as follows:

"

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."*

14. It was also noticed that the contents of the report submitted by the Committee, Chaired by Justice N.K. Patil, were neither denied nor admitted by Respondent No. 9, though in their reply to the application it was expected to respond to the report. The report of Justice N.K. Patil is to the effect that the lakes and the wetland should be protected in the city of Bangalore and message ought to be taken to protect them and also to remove the encroachment in the lake area as well as Rajakaluves. It was also noticed that large construction activities prejudicial to environment is being attempted in those areas. The report prepared by ENVIS, Centre for Ecology Science, Indian Institute of Science, Bangalore focused on the possible consequences of setting up of SEZ in Bellandur lake area and recommends restoration of these land in the area. Finding that

Respondent No. 9 though termed it as speculative based on presumption and Respondent No. 10 brushed it aside contending that it was frivolous and tailor made to support the case of the Applicants and also attacked the report on the ground that Dr. T.V. Ramachandra who prepared the report is a party to another Writ Petition before the Hon'ble High Court of Karnataka and therefore the report is biased as Dr. T.V. Ramachandra was also a member of the Committee which prepared the report, it was found that the objections are untenable. It was also found that Environmental Clearance was granted to Respondent No. 9 on 17th February, 2012 and Respondent No. 10 on 30th September, 2013, but the construction activities were carried out by the Project Proponents much prior to the grant of Environmental Clearance. It was therefore found that Respondent Nos. 9 and 10 are defaulters of statutory provisions, as they could not have started construction of the project before getting the Environmental Clearance. Though it was found that the compensation payable on various counts by the Project Proponent for the environmental degradation cannot be determined on exactitude, they are liable to pay for violation of law, raising construction unauthorizedly and illegally, for restoration of environment and ecology. A committee was constituted with the Advisor in the Ministry of Environment, Forests and Climate Change dealing with the subject of wetlands, CEO of Lake Development Authority, State of Karnataka, Chief Town Planner of BBMP, Bangalore, the Chairman of SEAC which recommended the grant of Environmental Clearance to the projects, Senior Scientist

(Ecology) from the Indian Institute of Sciences, Bangalore, Dr. Siddharth Kaul, former Advisor to Ministry of Environment, Forests and Climate Change and a Senior Officer from the National Institute of Hydrology, Roorkee as members, to submit report on whether the projects in questions have encroached on the wetland and Rajakaluves for construction and if so the adverse environmental and ecological impacts of these projects on the Bellandur Lake, Agara Lake as well as Rajakaluves. The committee was also directed to specify in the report whether any Rajakaluves have been covered by the construction activities of Respondent No. 9 or Respondent No. 10 or by any other projects in the area and the adverse impacts on the surrounding ecology and environment with particular reference to lakes and wetlands and if so the details thereof with reasons. The committee was also directed to report whether any of the conditions of the Environmental Clearances was violated by either Respondent No. 9 or by Respondent No. 10 or both. The committee, as directed, submitted the report and after going through the report, we noticed several deficiencies and non-compliance of directions in the report. Therefore the following order was passed on 10th September, 2015.

> *"Vide our Judgment dated 07th May, 2015, we have constituted a High Power Committee to comply with the directions contained in Paragraph 85 of the judgment. The judgment passed by the Tribunal was in the nature of preliminary decree and final judgment/ decree on behalf of that was passed after receiving report of the High Powered Committee. The High Powered Committee firstly did not file the report within the stipulated time and now when the report has been filed before the Tribunal, we have no hesitation in observing that the report does not comply with the directions of the Tribunal in its true spirit and*

substance. Inter-alia, but primarily, we would point out the following deficiencies and non-compliance of the directions issued by the Tribunal in its judgment:-

1. *We may notice that the report is not comprehensive and non-compliant in all its major aspects. The stand taken by the Lake Development Authority of Bangalore before the Tribunal is different than the one on the basis of which now the report has been submitted. The committee has also not mentioned the factors relevant for determination of environmental compensation.*
2. *It is stated in the report that there is unauthorized encroachment and possession taken by the builders of nearly 3 acres and 10 guntas. However, as it appears from the records, the State had allotted 63 acres and 37 guntas of lands to the builders. The builders are in possession of practically of 72 Acres of land which they have covered, including the wetlands and have also raised boundary walls and other constructions. It will be obvious that area occupied would be nearly 12.47 guntas and not 3 Acres and 9 guntas as mentioned in the report. The committee has nowhere referred as to what action is required to be taken and what measures should be adopted to remedy this very serious wrong committed by the builders.*
3. *Catchment area and inter-connectivity of the lakes had just been mentioned in the report but without any comments and recommendations as to what steps are required to be taken and what is the extent of damage done by these builders to the ecology and environment, particularly the wetlands of the area in question.*
4. *The Report does not state categorically as to which of the conditions of the environmental clearance order have been complied with and which have not been complied with. It is completely silent on the consequences and remedial measures on that behalf.*
5. *The report has vaguely stated that there should be compliance to the statutory regulations for health and sanitation. It was expected to inform the Tribunal as to the existing or proposed projects of STP/ETP as may be required with regard to their capacity, technology to be adopted, etc. The report is completely silent as to what is the point of discharge of sewage and other effluents from the project in question, what remedial measures are required to be taken for ensuring compliance of the law in that behalf, source of water for construction activity and otherwise and its utilization; whether the water will be recycled and to what extent, as it would be evident that the NOC which the Project Proponent has, is only for 18 flats.*

We are informed by the Committee members who are present, that the builder is expected to construct around 13.5 Lakh Sq. Mtrs. of area. Unfortunately this aspect did not receive the attention of the Committee members.

6. *There is no specific recommendation or observation made in relation to compliance to the conditions of the Environmental Clearance, particularly with regard to Buffer Zone and air pollution.*
7. *(a) It was expected from the Committee to inform the Tribunal as to the measures required to be taken under the sanctioned plans, the various NOCs and clearances granted in relation of air and water pollution and particularly in relation to sewage.*

   (b) Identification of the 'kharab land' and whether the builder is raising any construction on that land and was such construction at all permissible under the conditions imposed upon the builder and in accordance with law in force?

   (c) The Committee should have also examined whether there was violation of the condition, that no leveling and dumping particularly on the Rajakaluves is permitted and if the builder had covered any wetlands and Rajakaluves or was interconnectivity adversely affected and what action has been taken for removal of the dumped material?

   (d) What was the status of the show cause notice issued by the Pollution Control Board to the builders and what steps were required to be taken?

Non-providing of such information/ recommendation by the Committee has made it very difficult for the Tribunal to pass final directions and dispose of the matter in accordance with law.

The Tribunal had very high expectations from the Committee constituted of such Senior Officers and who are experts in their respective fields. It cannot be disputed that Bangalore was a city of lake and at one point of time, it had 261 lakes out of which only 68 remains as of today. The Members of the Committee present submit that there are even more water bodies but some of them have dried up as of now.

Be that as it may, this is a fit case where the Hon'ble Expert Members of the Tribunal need to visit the site themselves. Having considered the various aspects of the case and to dispose of this matter expeditiously and in accordance with law, it is necessary that the Hon'ble Expert

Members of the Tribunal themselves may visit the site and ensure that there should be meaningful interpretation of facts and the correct position as exiting at the site should be placed before the Tribunal in regard to the directions of Tribunal.

The Tribunal at this stage will make a reference to the judgment of the Hon'ble Supreme Court of India in the case of "Ministry of Environment Vs. Nirma Pvt. Ltd." Appeals No. 8781 – 8783 of 2013, decided by the Hon'ble Supreme Court of India vide its order dated 4th August, 2014. Vide this judgment, the Hon'ble Supreme Court of India upheld the order passed by this Tribunal in that case for inspection of the site by the Hon'ble Expert Members of the Tribunal. The dictum of the Hon'ble Supreme Court of India clearly enunciated that the said order was squarely covered under the provisions of the Order XVIII, Rule-18 of the CPC. Such an approach is not generally adopted by the Tribunal and is adopted by the Tribunal only in exceptional cases and the present case happens to be falling in that class of cases.

In view of the above discussions and to have the complete and comprehensive information necessary for passing the final judgment, we direct as follows:

(a) All the Members of the High Powered Committee constituted vide our order dated 7th May, 2015 would be present at the site tomorrow i.e. 11th September, 2015 at 11:00 A.M.

(b) Complete records by all concerned authorities shall be produced before that Committee.

(c) Hon'ble Dr. D.K. Agrawal and Hon'ble Prof. A.R. Yousuf, Expert Members of the Tribunal, would be present and entire further proceedings would be taken in their presence. It shall be ensured that queries mentioned in this order are completely and fully answered.

(d) We direct the State of Karnataka, all the concerned departments, authorities, Corporations to be present and fully co-operate with the High Powered Committee and to provide all assistance and help to the Hon'ble Expert Members and the Committee.

Let the report be submitted to the Tribunal."

15. Pursuant to the said order the two Expert Members inspected the project area and prepared the Inspection Note copy of which was furnished to all the parties.

16. The Learned Senior Counsel appearing for the Applicants, Respondent Nos. 9 and 10, Respondent Nos. 11 and 12 and the MoEF and other respondents were heard.

17. The Learned Counsel appearing for Respondent Nos. 11 and 12 and the Applicants argued that though Respondent No. 9 and 10 had preferred Appeals challenging the main judgment, they were withdrawn with liberty to approach the Tribunal, and as the Judgment was not interfered by the Hon'ble Supreme Court, Respondent Nos. 9 and 10 are not entitled to challenge the findings in the main Judgment. The Learned Counsel relied on the observations made in the order dated 10th September, 2015 that the main judgment "was in the nature of a preliminary decree and a final judgment has to be passed after receiving the report of the High Power Committee" and argued that when the findings in the preliminary decree cannot be challenged in the subsequent application for passing final decree, Respondent Nos. 9 and 10 are not entitled to challenge any of the findings in the main judgment and therefore they could only address the Tribunal on the quantum of compensation and not the liability to pay compensation. As rightly pointed out by the Respondent Nos. 9 and 10, though in the order dated 10th September 2015 while considering the procedure to be adopted on submission of the report by the High Power

Committee, it was observed that the main judgment is similar to a preliminary decree passed and based on the report submitted by the High Power Committee a final decree and judgment have to be passed. The main judgment does not show that it was passed as a preliminary decree. Moreover, the Respondent No. 9 and 10 have challenged the correctness of the said judgment, before the Hon'ble Supreme Court and the Hon'ble Supreme Court granted liberty to approach the Tribunal for hearing on the disputed questions. In such circumstances it cannot be said that when Respondent Nos. 9 and 10 were permitted to address the Tribunal on these aspects, they are not entitled to argue the correctness of the findings on the liability, based on the materials on the record. Moreover, it is not the law that once a preliminary decree is passed, before the final decree is passed, another supplementary preliminary decree cannot be passed. The law has been settled in Ganduri Koteshwaramma and Another v. Chakiri Yanadi and Another ((2011) 9 SCC 788) by the Hon'ble Supreme Court as follows:

> *"20. Section 97 of C. P.C. that provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of the court to modify, amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require.*
>
> *21. It is true that final decree is always required to be in conformity with the preliminary decree. But that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of changed or*

supervening circumstances even if no appeal has been preferred from such preliminary decree."

18. Moreover the High Power Committee submitted the Report and objections were raised on their findings. The Expert Members had inspected the sites and submitted an Inspection Note, copy of which was made available to all the parties. In such circumstances necessarily the said materials have to be considered and Respondent Nos. 9 and 10 are definitely entitled to address the Tribunal on these material aspects which are necessarily to be considered by the Tribunal. Therefore we cannot accept the objection raised by the Appellants and Respondent Nos. 11 and 12 that Respondents No. 9 and 10 cannot be heard on the question of their liability to pay environmental compensation as well as the factum of environmental degradation caused by proceedings with the construction of the projects.

19. The Learned Senior Counsel Mr. R. Venkatramani argued that on the materials available on record, it is clear that Respondent No. 9 did not start the construction work, prior to the granting of Environmental Clearance for the project, and therefore, on that basis Respondent No. 9 cannot be found liable for payment of damages or environmental compensation. It was argued that there is no mention of Valley, catchment or sensitive zone in the revenue records and the Revised Master Plan 2015 (in short 'RMP 2015') does not record the disputed lands as industrial land, though the Project Proponent has intimated objections to the draft Master Plan.

The lands having been permitted by HLCC of the Government of Karnataka to be notified for industrial use as early as 2000 and the subsequent action of KIADB in acquiring and allotting the land for the projects shows that classification of certain land as "sensitive" does not apply to the disputed lands. It was argued that the Zonal Regulations for the City of Bangalore published along with RMP 2015 reveals the correct position and, therefore, the State cannot be asked to undertake reconsideration of all clearances and sanctions. It was pointed out that in terms of the Zonal Regulations a buffer zone of 30 meters is to be set aside around lakes and in respect of permissible land usage within the buffer zone, permission of the planning authority will be required and, therefore, outside the buffer zone, developmental activities is not within the domain of the planning authority. The Learned Senior Counsel also argued that both the Planning Authority and Sensitive Zone Committee are bound by the Zonal Regulations and have no statutory authority to deal with the developmental activities outside the buffer zone. The argument is that statutory permission regarding use of property are required to be decided in accordance with the law applicable at that time when the permission was granted and the law includes master plans drawn in exercise of statutory powers. As the land in question was brought under KIADB Act in 2001 and notification was issued under Section 28 (4) of the said Act for acquisition the land in question in April 2004, as per Section 47 of the said Act the Authority is competent to deal with the land placed at its disposal, notwithstanding anything inconsistent under any other law. The

Master Plan for the period 1995 to 2005, though extended upto 22nd June, 2007, it was superseded by the RMP 2015 and, therefore, long prior to the revised master plan, the land was not only set apart for industrial purpose but also stood acquired by KIADB. The State Government had approved the project on the land in question on 21st June, 2000 much prior to the coming into force of RMP 2015. RMP 2015 would not apply to statutory process finalized prior thereto. The learned counsel pointed out that the inspection note prepared by the Hon'ble Expert Members (in short 'the Inspection Note') noted the status and nature of the land in question from 1992 onwards as set apart for housing development and the other purposes. Therefore, there is no illegality with regard to the location of the project or on environmental angle. The learned senior counsel also argued that *Kharab* land is a non issue, as it does not emerge from any record that any portion of the project site stood designated as *Kharab* lands. As the land was always under cultivation and no record exists indicating any class of *Kharab*, enquiry on the matter is only academic. The learned counsel also argued that when the project site was handed over to the respondents, there was no trace of any specified classes of *Kharab* land to be protected. As the land in question was acquired by BDA in 1991 for public purposes and was declared as industrial area by the Government in 2001, the statements in the revenue map of 1904 lose their significance. As the entire land was acquired by the KIABD without any portion being `A' or `B' category land, project proponent is entitled to use the said land without any

further reference to the classification. The Learned Senior Counsel argued that the findings in the main judgement that Respondent No. 9 commenced construction before obtaining the Environmental Clearance is factually incorrect. Relying on the inspection report prepared by the Chairman KSPCB dated 11th January, 2012, it was argued that construction was not commenced on 11th January, 2012, as it was recorded that "The proposed site is vacant and is yet to take up construction work". It was also pointed out that the report of the High Power Committee reveals that "M/s. Mantri Technozone Private Ltd." (Formerly called Manipal ETA Pvt. Ltd.) had started construction after obtaining clearances" and in the reply the respondent has specifically pleaded that they commenced construction only during November, 2012 and there is no material to show that any construction had commenced before 17thFebruary, 2012, the date of granting of Environmental Clearance. The learned counsel also argued that the relevant records like tax return, vouchers for the works done and agreement for earth works, all relates to the period subsequent to 17th February, 2012. It was therefore vehemently argued that based on google satellite images, a contrary finding cannot be entered into. The learned Senior Counsel also argued that Respondent No. 9 obtained NOC from Respondent No. 5, only with regard to the residential units and not for the entire project and therefore the case that Environmental Clearance obtained by the Respondent No. 9 is based upon the partial NOC is misconceived. The High Level Committee of the Government of Karnataka had cleared the project on 21st June,

2000 which includes the total water requirement of the entire project being 4 lakh liters per day. The facilities and concessions granted by the State include 4 lakh liters of water per day to be supplied by the Respondent No. 5. The object was to avoid duplication of process of consideration at multiple levels and avoidance of delay. The clearance by the High Level Committee is understood to be a clearance in all aspects. The SEIAA in the 47th meeting recorded that the proponent and Environmental Consultant explained the queries raised by the SEAC during the meeting held on 07th July, 2011 and the project proponent had informed that the project has obtained approval from Single Level Window Clearance Committee of the State and hence separate NOC from the WSSCB is not required. Therefore, it was argued that SEIAA not only noticed the water requirement, but also that all the queries were duly answered. It was also argued that though Appellants had contended that the respondent severely damaged and disturbed *Rajakaluves,* no material was produced to substantiate the same and digital images though submitted were not duly explained and the observations in the report submitted by the High Power Committee that the excavated soil has been dumped on *Rajakaluves* resulting in reduction of their width, that conclusion was drawn on the basis of the Notice dated 02nd January, 2014 issued by the KSPCB without adverting to the reply submitted by the respondent to the notice on 27th January, 2014. It was also argued that digital images available to the public are poor aids in drawing any conclusion that any construction debris

has been wantonly let loose on the *Rajakaluves*. The Learned Senior Counsel argued that huge amount of untreated sewage water and storm water flow into Bellandur lake and it would have been humanly impossible to block *Rajakaluves* without exposing to inundation and flooding of the project land and in any case Respondent No. 9 is willing to take any remedial measures. It was also argued that though imposition of condition no. 39 in the Environmental Clearance was inappropriate, Respondent No. 9 has not done anything with an intention to commit any wrong. The Learned Senior Counsel pointed out that the inspection note reveals that the said condition that no alteration to the existing topography, is practically impossible to implement considering the type and extent of construction. It was argued that a reasonable interpretation of this condition would lead to a meaning that upon completion of the construction, the sloping pattern and topography of the land should not be altered in such a way that water flow in the direction as it existed earlier shall not be changed or altered, so that the neighboring areas are not inundated. It was further argued that substantial requirement of the construction would ultimately ensure that there is no problem of storm water affecting the lake. The Learned Senior Counsel strenuously argued that the allegation of encroachment of 3 Acres and 10 guntas of lake area in survey no. 43 is baseless as Respondent No. 9 has not raised boundary wall enclosing the said part of the lake. The High Power Committee only noticed that muck was found deposited in the said area. Respondent No. 9 has not dumped the muck in the lake and in any

case the problem can be resolved by erection of the boundary wall excluding the said area. The case of encroachment was built based only on the dumping of muck found deposited therein. The Committee had relied on the letter dated 14th August, 2015 issued by KIADB in Kannada language, due to the mistake in the translation and the letter does not disclose any encroachment but only reveals dumping of muck. No part of the said land was enclosed by the Respondent No. 9 either temporarily or permanently. As Respondent No. 9 has not dumped any muck he cannot be penalized and made liable for the same. In any case there is no material to show that the muck was dumped with an intention to encroach the said area. The entire area was opened to the public access prior to 2012. The department of Defence which is occupying the neighbouring land, disputed the boundary identified by KIADB and wanted the respondent to give up their own lands. It was done and identification of the boundary on the northern side of the project is under finalization. It was also argued that the construction would be carried out only as per the sanctioned plan which does not in any way include 3 Acres and 10 Guntas. It was pointed out that outstanding disputes exist with regard to 6 Acres and 19 guntas of private land, which are not part of any sanctioned plan and there is no amalgamation of the said private land with the land allotted to the respondents by KIADB. The sanctioned plan of Respondent No. 9 is confined only to the extent of 63 acres 37 guntas. It was therefore argued that there is no basis for the allegation raised against the Respondent No. 9.

The Learned Senior Counsel therefore argued that the materials on record clearly show that Respondent No. 9 has not caused to any environmental damage or degradation. The Learned Senior Counsel argued that the earlier findings on the violation committed by Respondent No. 9 as well as the liability to pay an environmental compensation of Rs. 117.35 Crores are to be modified.

20. The Learned Senior Counsel Mr. Raju Ramachandran appearing for Respondent No. 10 argued that if the allegations raised against Respondent No. 10 are separately considered, without clubbing the same with the allegations raised against Respondent No. 9, it can only be found that Respondent No. 10 did not commit any violation or environmental degradation and therefore Respondent No. 10 is not liable to pay any damages. The Learned Senior Counsel argued that though the inspection note shows that the lands falls under category `C' *Kharab* land and the *Kharab* lands are required to be classified by the revenue authorities no *Kharab* land is situated in the project area of Respondent No. 10 as is clear from the lease deed, the possession certificate and the allotment. The project has been classified as industrial land. RMP 2015 does not indicate existence of any *Kharab* land in the said area. The Major Storm Water Drains of Bengaluru, August 2010 prepared by the Bruhat Bengaluru Mahanagar Palika (in short 'BBMP') establishes that there are no *Kharab*/Primary Storm Water drain/Secondary Storm water drain that exist in the property belonging to Respondent No. 10. The

Bengaluru Guide Map prepared by the Survey of India also does not indicate any *Kharab*/Storm Water Drain/*Rajakaluves* in the said property. On the allegation of violation of buffer zone and dumping of muck in close proximity of *Rajakaluves*, it was argued that though they were answered in the Inspection Note affirmatively, as per the RMP 2015, 30 meters buffer zone is required to be maintained from the lakes and 50 meters buffer zone from *Rajakaluves*. The distance of the lake from the proposed building of the respondent No 10, in the buffer zone of Agara lake is 61 meters and from the buffer zone of Bellandur it is far away. The Learned Senior Counsel also argued that on the Western side the proposed building of Respondent No. 10 is 50 meters away from the Centre of *Rajakaluves* and on the North Western side there is a unmetalled road, some area reserved park, open spaces and therefore buffer zone of 50 meters will be maintained and on the other side the property is separated by an unmetalled road, a proposed CDP/RMP road and hence buffer zone of 50 meters will be maintained. It was also argued that as Respondent No. 10 has not initiated the construction work, there is no question of dumping any waste or causing any damage to the environment. It was also argued that the land in question originally belonged to private parties and were later acquired by Respondent No. 7 and allotted to Respondent No. 10 by letter dated 17th March, 2008 and when the land was allotted there was no *Rajakaluves* passing through the said property. It was also argued by the Learned Senior Counsel that High Court of Karnataka in WP 44277 of 2011 (Shobha Developers Ltd. Vs. BBMP

and Others.) already held that the village map will be superseded by the RMP and therefore it can only be found that there did not exist any *Rajakaluves* within the land belonging to Respondent No. 10 and they did not cause any damage or environmental degradation. The Learned Senior Counsel also argued that BDA constructed roads around Agara lake and one among the road is a ring road and the other is a major arterial road and both roads are abutting Agara lake and they are in between Agara lake and the properties belonging to the Respondent No. 10 and the ring road would be widened from its present width of 22 meters to 45 meters and for that purpose Respondent No. 10 has already agreed to give part of their property required for road formation. It was also argued that the source of water is as sanctioned by NOC dated 04th April, 2013and a full fledged sewage treatment plant shall be constructed. The Learned Senior Counsel therefore argued that the basis for awarding payment of environmental compensation for commencement of the construction prior to the granting of Environmental Clearance is not true as against Respondent No. 10 as the construction is yet to be commenced. The inspection note would only reveal that Respondent No. 10 has only done the preparatory excavation work and no construction was commenced. Though it was found that Respondent No. 10 is a defaulter of statutory provisions and violated the law, in view of the PIL filed before the High Court of Karnataka and the stay order passed on 16th April, 2014, Respondent No. 10 did not proceed with the construction and he had not committed any violation. Therefore

Respondent No. 10 is not liable for any compensation or damage for environment degradation.

21. The Learned Counsel appearing for the Appellants vehemently argued that the earlier findings in the judgment, the facts reported by the High Power Committee appointed by the Tribunal and the Inspection Note submitted by the Expert Members establish that both Respondent No. 9 and 10 caused environmental degradation and hence are liable to pay the damages. The Learned Senior Counsel Mr. Raj Panjwani argued that the Polluter Pays Principle mandates restoration of environment and invoking the polluter pays principle, Respondent No. 9 and 10 are liable to pay the damages, both general and special. The Learned Senior Counsel argued that the report relied on in the main judgment, the report submitted by the HPC and the Inspection Note, all establish the environmental damages caused by respondents 9 and 10. It was argued that Respondent No. 9 has encroached upon a portion of the Agara lake by dumping the muck, with the intention to treat it as part of their land and the fact that the encroached land has been put into their illegal possession is established from the materials placed on record. The Learned Senior Counsel also argued that Respondent No. 10 has also put the muck on the adjacent *Rajakaluves* and thereby caused irretrievable damage to the environment. The Learned Senior Counsel argued that the commencement of the construction does not mean construction of the building per se but also include the preparatory work for the construction including excavation of soil for construction of the foundation and the fact

that soil has been excavated is not only not disputed but is admitted. It was argued that the damage caused to the lake, the *Rajakaluves* and the environment is amply clear from the various reports submitted and in such circumstances, there is no reason to vary the findings in the main judgement as claimed by Respondent No. 9 and 10. The Learned Senior Counsel pointed out that as per the Environmental Clearance granted to Respondent No. 9 on 17th February, 2012, the total plot area is 292636.03 Square meters which works out to 72.22 Acres and the land allotted to Respondent No. 9 as per the allotment dated 28th June, 2007 is admittedly only 63 Acres and 37.5 guntas which works out to be 63.94 Acres. It was pointed out that it is admitted by the Respondent No. 9 that 1 Acres and 36.5 guntas, which works out to be 1.91 Acres ,could not be taken possession due to the dispute with the Defence and their case is that an extent of 6 Acres and 19 guntas , which works out to be 6.47 Acres , was acquired by Respondent No. 9 through private negotiation. Therefore, the total land which could legally be claimed by Respondent No. 9 is only 71.74 Acres and out of the said land , due to the dispute with the Defence , 1.91 Acres cannot be claimed by Respondent No. 9 and the total land with Respondent No. 9 could therefore be only far less than 72.22 Acres, for which the Environmental Clearance was obtained and if that be so the Environmental Clearance granted warrants modification and with the faulted Environmental Clearance Respondent No. 9 is not entitled to proceed with the construction.

22. Learned Senior counsel Mr. Sajan Poovayya appearing for Respondent Nos. 11 and 12 , while supporting the submissions made by the Appellants , pointed out that the findings in the report of the High Power Committee supports the findings rendered in the main judgment that the project proponents are constructing their project on a land classified as sensitive zone as per RMP 2015 and that they have not obtained mandatory clearance from the Sensitive Zone Committee, that the lands allotted to the Project Proponents include lands earmarked for public utilities, garbage facilities, treatment plant, parks and open space in the RMP 2015, that the Project Proponent has dumped the excavated soils on the *Rajakaluves* causing reduction of their width, that Respondent No. 9 illegally occupied 3 Acre and 10 guntas of land which is part of the lake and only 63 Acres and 37.5 guntas of land was transferred in favour of Respondent No. 9 and without obtaining requisite permissions and clearance the 6 Acres and 19 guntas of private land was illegally amalgamated with the leased land and it vitiates the sanctioned plan for 72 Acres which include the land leased by KIADB, the private land acquired and the unauthorizedly encroached 3 Acres 10 guntas of lake portion and they are not entitled to use *Kharab* land except for maintaining it as green belt. It was also argued that the Inspection Note establishes that all the leased land , privately acquired land and the encroached land from the lake are parts of the land claimed by Respondent No. 9 and the conditions in the Environmental Clearance that the topography shall not be changed has been breached, there are multiple

violations by the Project Proponents with regard to the filling of low lying area, discharge of sludge to *Rajakaluves,* violations of buffer zone, dumping of excess soil in close proximity of *Rajakaluves* and non-identification of *Kharab* land which ought to be done before construction of the building. Clearance from BWSSB was received by respondent no 9 only for 18 residential flats and that the developmental project would cause traffic problems and therefore the earlier findings rendered in the main judgment warrants no interference. It was also argued that stringent action is to be taken to protect the lake and waterbodies in the city of Bengaluru and omnibus directions are necessary as developmental activities being undertaken in the vicinity and around the lakes and waterbodies in the city of Bengaluru is increasing day-by-day. The High Power Committee inspected not only the disputed sites but also several other areas. It was argued that apart from the general condition which was part of Environmental Clearance, it is necessary to specify and stipulate detailed protocol of specific and general conditions to be followed by projects of similar constructions so as to preserve and protect the environment and ecology of Bengaluru.

23. Based on the arguments and the materials placed on record the following points arise for consideration.

1. Whether Respondent No. 9 has commenced the construction of the project before the granting of Environmental Clearance?

2. Whether Respondent No. 9 has encroached any part of the Agara lake and thereby caused environmental degradation?

3. Whether Respondent No. 9 has violated any of the conditions of the Environmental Clearance granted?

4. Whether the Environmental Clearance granted to the project of Respondent No. 9 is to be reviewed?

5. Whether Respondent No. 10 has commenced construction activities before granting of Environmental Clearance?

6. Whether Respondent No. 10 has dumped muck on the adjacent *Rajakaluves* and thereby reduced its width and caused any environmental damage?

7. Whether Respondent No. 9 and 10 are liable to pay environmental compensation and if so the quantum?

24. Keeping in view the order of the Hon'ble Supreme Court of India, the peculiar facts and circumstances and more particularly the fact that one of the Hon'ble Expert Member (Dr. D.K. Agrawal) would be demitting the office on 05th May, 2016, we passed the operative part of the Judgment with holding that the reasons would be recorded in the later part of the day. The reasons are recorded below:-

Discussions on Point Nos. 1 to 4:

25. Based on the materials, in the main judgement it was found that Respondent No. 9 commenced the construction work of the project before obtaining the Environmental Clearance, has dumped the muck into a portion of the lake adjacent to their properties and thereby encroached upon 3 Acres and 10 guntas of land from the lake, violated the conditions in the Environmental Clearance and caused environmental degradation. The argument of the Learned Senior Counsel Mr. Venkataramani is that though a portion of the muck was dumped on a portion of the lake it was not done by the Respondent No. 9 and Respondent No. 9 has not encroached any portion of the lake and in fact has no intention to encroach upon any portion of the lake. The Learned Senior Counsel also argued that the alleged encroached land could always be protected by putting up a boundary wall excluding the alleged encroached land and Respondent No. 9 has no objection for measuring and demarcating the said land and therefore based on that alleged encroachment, it cannot be found that Respondent No. 9 has committed any environmental degradation.

26. Before considering the argument, it is necessary to bear in mind the background of the case. Respondent No. 9 obtained the Environmental Clearance on 17th February, 2012. The relevant portion of the Environmental Clearance reads

> *"2. It is, inter-alia, noted that M/s. Manipal BTA Infotech Ltd., Bangalore have proposed for construction of mixed use development with residential, retail, hotel, office, SEZ*

& Non-SEZ on a plot area 2,92,636.03 Sqm out of which net plot area is 2,76,070.75 Sqm. The total built up area is 13,50,454.98Sqm (Residential Block 1 & 2 – 2,91,909.44 Sqm. Retail, Hotel & Office: 3,78,502.13 Sqm. Office SEZ: 6,23,570.87 Sqm. Office Non-SEZ 56,422.54 Sqm). The mixed use development consists of Residential with 748 dwelling units in 2 blocks (Block 1 consists of Block A with 2B+G+14 UF & Block B with 2B+G+10UF and Block 2 consists of 2B+G+14UF), Retail, Hotel (five star & two star hotel consists of 636 rooms) and office building consists of 3B+G+12UF. Total parking space proposed is for 14,675 cars. Total water consumption is 4587 MLD (Fresh water 3259 KLD + Recycling water 1328 KLD) out of which 960 KLD is for retail building, 254 KLD is for Office building, 1718 KLD is for SEZ 239 KLD is for residential block 1,647 KLD is for residential block 2,577 KLD is for five star hotel and 191 KLD is for two star hotel. The wastewater discharge is 3869 KLD out of which 816 KLD from retail building, 216 KLD from office building, 1460 KLD from SEZ, 201 KLD from residential block 1, 543 KLD from residential block 2, 475 KLD from five star hotel and 158 KLD from two star hotel. It is proposed to construct 7 Sewage Treatment Plants with a capacity of 625 KLD (Retail), 225 KLD (Office), 1475 KLD (SEZ), 205 KLD (Residential Block 1), 550 KLD (Residential Block 2), 480 KLD (Five Star Hotel) and 160 KLD (Two Star Hotel). The project cost is Rs. 2347 Crores."

27. It is thus clear that the net plot area for which the Environmental Clearance was granted is 292636.03 Sq.m. It is not disputed that the said square meters area when converted to Acres would be 72.22 Acres (i.e1 Acre is 4052 Sq.m). The land which was allotted to Respondent No. 9 is admittedly 63 Acres 37.5 guntas. (10 guntas is 0.24 Acres). The said land therefore works out as 63.94 Acres. This fact was also not disputed. Even according to Respondent No. 9 the land acquired through private negotiation was 6 Acres 19 guntas which works out to be 6.47 Acres. Even out of the said lands Respondent No. 9 admits that there is dispute with the Defence on the boundary and ultimately Respondent No. 9

was prepared to give up the said disputed land to the Defence. The fact that the said disputed land is 1 Acre and 36.5 guntas, which works out to be 1.91 Acres, is also not disputed. These are the only lands available with Respondent No. 9.If that be, so the total area including the land obtained on allotment and on private negotiation would come to 70.41 Acres. If that be so, Respondent No. 9 could not have legally obtained an Environmental Clearance for a net plot area of 292636.03 Sq.m. which works out to be 72.22 Acres. It is more so, when out of 70.41 Acres, due to the boundary dispute with the Defence, Respondent No. 9 was prepared to give up 1.91 Acres. If that extent is also excluded from the lands available with the Respondent No. 9, the balance land legally available is only 68.50 Acres as against the net plot area of 72.22 acres covered by the Environmental Clearance. The case of the encroachment of the portion of the lake disputed by Respondent no 9 is to be appreciated in that background. The encroached area, which is disputed by the Respondent No. 9, is 3 Acres and 10 guntas which works out to be 3.24 Acres. If that area is also added to the land which Respondent No. 9 is otherwise legally entitled to, it would be 71.74 Acres. If Respondent No. 9 had no intention to encroach upon a portion of the lake, one is not expected to apply for and obtain an Environmental Clearance for an extent of 72.22 Acres, when Respondent No. 9 had obtained only 70.41 Acres, i.e. 63.94 Acres being the land obtained under allotment and 6.47 Acres being the land obtained on private negotiation. Moreover litigation is pending on the 6.47 acres of land and another extend of1.97 acres

of land, though covered under the allotment was disputed by the Defence and Respondent No 9 was prepared to give up .If the facts are so appreciated, one cannot accept the submissions of the Respondent No. 9 that portion of the lake was not encroached upon.

28. The High Power Committee was specifically directed to report whether the projects in question have encroached upon or are constructing on wetland and *Rajakaluves* and if so are there any adverse environmental and ecological impacts on the lakes particularly Bellandur lake and Agara lake as well as *Rajakaluves*. Based on the inspection and verification of records the High Power Committee reported as follows:-

> *"Further, from the records the area of M/s. MantriTechzone Pvt. Ltd., has increased from 63 acres 37.5 guntas (allotted by KIADB) to 72 acres 12.47 guntas (2,92,636.03 Sq.m as per details submitted to SEAC and KSPCB). Any amalgamation due to addition of land to the project site (allotted by KIADB) requires approval of the High Level Clearance Committee (HLCC) of Government of Karnataka chaired by Hon'ble Chief Minister. However, no such clearance has been obtained by M/s. MantriTechzone Pvt. Ltd.."*

29. The Committee felt that a detailed field survey of the land pertaining to Respondent No. 9 is necessary, for verifying the encroachment of the lake and *Rajakaluves. B*ased on the directions of the High Power Committee, a joint survey was undertaken by the surveyors and development officers of the Board and prepared a survey sketch. The relevant portion of the report appended to the survey sketch was annexed to the report submitted by the High

Power Committee. The English translation of the same reads as follows:

> *"As per the sketch, an extent of 6-19 Acres is included along with 63-37 ½ acres of land, which is already handed over. In the land already handed over, 0.02 guntas in Survey No. 15/24, 0-06 ½ guntas in Survey No. 42, 0.04 guntas in Sy. No. 47, 0-38 guntas in Survey No. 48, 0-26 guntas in Survey No. 50, totaling 1-36 ½ acres of lan, even though included in the 63-37 ½ acress of land acquired and handed over to M/s. Manipal ETA (presently M/s. Mantri Tech Zone) and same are outside the compound wall constructed by the said project authorities. Further, it is reported that in the adjacent Survey No. 43, government lake land, muck is dumped in an extent of 3-10 Acres.*

1	*Final Notification extent for acquisition*	*75 acres – 16 ½ guntas*
2	*Land handed over to the Board*	*63 acres – 37 ½ guntas*
3	*Land allotted but falling outside the compound wall*	*1 acres – 36 ½ guntas*
4	*The land in actual possession*	*62 acres – 01 guntas*
5	*Extent of land not handed over due to filling of Writ Petition in the Hon'ble high Court regarding cancellation of land acquisition notification.*	*6 acres – 19 guntas*
	Total area	*68 acres – 20 guntas*
6	*Extent of muck dumping in Government lake in Survey No. 43*	*3 acres 10 guntas*
	Total	*71 acres 30 guntas*

30. Based on the said report and the survey sketch the High Power Committee has reported as follows:

> *"The details provided by KIABD vide their letter mentioned above are listed below.*

I. *Land transferred by KIADB to M/s. Mantri – 63 acres 37.5 guntas*

II. *Land transferred but not secured by M/s. Mantri (presently outrisde their boundary wall) – 1 acres 36.5 guntas*

III. *Transferred land with M/s. Mantri {(I)-(II)}=62 acres 1 guntas*

IV. *Land not transferred but under litigation within the boundary wall of M/s. Mantri – 6 acres 19 guntas.*

V. *Survey No. 43, unauthorized occupation of lake area (within the boundary wall of M/s. Mantri) – 3 acres 10 guntas*

VI. *Total land within the boundary wall of M/s. Mantri {(III)+(IV)+(V)}=71 acres 30 guntas*

Therefore, as per KIADB survey, 3 acres 10 guntas (shown in green color in the sketch) is unauthorized occupation of Lake area by M/s. Mantri."

31. It is thus clear that an extent of 3 Acres and 10 guntas in survey no. 43 is dumped with muck and that area is actually part of the lake. Though Respondent No. 9 contended that it was not enclosed within any boundary wall or fencing, the report of the High Power Committee reveals a different picture. As stated earlier, the encroached area of 3 Acre and 10 guntas is described as "Survey No. 43 , unauthorized occupation of lake area (within the boundary wall of M/s. Mantri) and total land within the boundary of M/s. Mantri is 71 Acres and 30 guntas". The report further shows that as per the survey, the said 3 Acres and 10 guntas is in the unauthorized occupation of Respondent No. 9. The Inspection Note prepared by the Expert Members considered this aspect and stated as follows:

"1 The records show that the area allotted to the project comprised of 63 acres 37.5 guntas, whereas, owing to boundary disputes with the adjoining Military Area, they could not take actual possession of 1 acrs 36.6 guntas, thus out of the originally allotted land by KIADB, they are in possession of 62 acres 1 gunta land. According to the records placed, certain plots that were encircled within the above piece of land, have been acquired by them through private negotiations. Such land amounts to 6 acres 19 guntas. As per details furnished by the Revenue department, Survey No. 43 admeasuring 3 acres 10 guntas has neither been allotted by KIADB nor has been acquired by the project proponent, and as such the land in the revenue records as lake area, is unauthorizedly encroached upon by the project proponent and boundary wall has been raised around the entire land admeasuring 71 acres 30 guntas. Thus, unauthorized encroached land needs to be restored."

32. In the light of these materials it can only be found that Respondent No. 9 encroached 3.24 Acres (3 Acres and 10 guntas) of the lake in survey no. 43 and annexed the same with the land allotted to them as well as the land obtained on private negotiations. The modus-operandi of the encroachment is clear viz. dumped the muck first and thereby fill up that portion of the lake and thereafter annex the same with the remaining property. If the intention of dumping the muck was not to encroach and annex that portion of the lake, with their property obtained on allotment and private negotiations, an application for Environmental Clearance along with the approved plan for a net total area 72.22 Acres could not have been made when the total land available was only 70.41 Acres including the land obtained on allotment and private negotiations and that too when possession of 1.91 Acres of the allotted land was not obtained and that was admittedly kept out of the boundary wall constructed by the Respondent No. 9. The plan

and proposal for 72.22 acres could have been made only with the intention of making up the difference and extend it by encroaching the portion of land from the nearby lake.

33. Though the High Power Committee reported that Respondent No. 9 had started construction after obtaining clearances and relying on the said observation, the Learned Senior Counsel argued that the inspection report prepared by the Chairman KSPCB supports the said conclusion, on the available materials, we cannot agree.

34. Construction does not mean construction of only the building. Construction envisages different processes starting from clearing the land, excavating the land for the foundation, building the foundation and the work till the entire construction is completed. The inspection report relied on by Respondent No. 9 is the one prepared by Mr. A.S. Sadashivaiah, Chairman of KSPCB based on his inspection dated 11th January, 2012. The relevant portion of the report that "the subject of issue of consent for establishment is discussed in the consent committee meeting held on 18th November, 2011 and the committee recommended for visit of the site by the Chairman and Member Secretary and to call the Project Proponent for technical presentation. Accordingly the proposed site was inspected on 11th January, 2012 and the following observations were made

> *"The subject of issue of consent for establishment was discussed in the Consent Committee meeting held on 18.11.2011 and the committee recommended for visit of*

the site by the Chairman and Member Secretary and to call the project proponent for technical presentation. Accordingly the proposed site was inspected on 11.01.2012 and the following observations were made

1. *The proposed site is bounded by natural valley (Raja Canal) in the North.*

2. *The proposed site is bounded by Sarjapura main Road and there after Agara lake (Agara lake is about 50 meters) on South side.*

3. *The proposed site is bounded by private property, natural valley and Jakkasandra area on West side and*

4. *The proposed site is bounded by private property and defense road on East side.*

5. *Some part of the proposed land is filled up with soil and debris. Most of the proposed area is low lying and water logged area.*

6. *A creak of Bellandur tank back water is with in the proposed land and filled up with water.*

7. *The proposed land has not been clearly demarcated from the boundary of the Bellandur tank bed area and natural valley (raja canal) leads to Bellandur tank.*

8. ***The proposed site is vacant and yet to take up construction work."***

35. Even the said report establishes that some part of the proposed land was filled up with soil and debris and most of the proposed area is low lying and water logged. It also establishes that a creek of Bellandur Lake backwater is within the proposed land and is filled with water. It is also clear from the report that the proposed site then was not clearly demarcated from the boundary of Bellandur Tank bed area and the natural valley leads to the Bellandur Tank . True, the report shows that the site was then vacant and construction work was yet to take up. When this report

is appreciated in the light of the report submitted by the High Power Committee and the Inspection Note prepared by the Expert Members, it is clear that the low lying area was filled up and excavation work for the construction was undertaken. The relevant portion of the Inspection Note reads:

> *"a.* ***General topography and physical features seen at the site indicate that huge alterations to the topographic features of the area have been made for the project activities of Respondent No. 9.***
>
> *b.* ***As per the details collected, cumulative quantity of excavation upto of 3 Meters is 254168.82 cubic meters, excavation upto in the range of 3 to 6 Meters is 136346 Cubic Meters, excavation in the range of 6 to 9 Meters is 21222 Cubic Meters and excavation in the range of 9 to 12 Meters is 8212 Cubic Meters.***
>
> *c. during the course of site visit, reference to the inspection made by the KSPCB on 2nd January 2014 was made. Subsequently, upon enquiry, original records of the same were perused and it was felt that the report provides valuable insights and photographic evidence to various observations made in the report. A copy of the same is placed at page nos. K-1375 to K-1384.* ***The Inspection Report of Pollution Control Board in para 3 noted that excess soil from construction was being used within project area for filling low lying area.*** *In para 5, issue of construction water supply is dealt, Issue of large number of labourers and labour camps and absence of STP in para 6 whereas para 7 records discharge of sullage from labour camp to the Raj kalewas. In para 8b, issue of buffer one violation was noticed and in para 9, dumping of excess soil in close proximity ot the Raj Kalewas was noticed. For the various observations, photographic evidence with corresponding indexing on the project layout map has also been annexed to. These photographs with the current photographs indicate the state of affairs that prevailed at the site."*

36. Therefore it can only be found that, Respondent No. 9 had commenced the construction much before 17th February, 2012, the date when the Environment Clearance was granted.

37. The Inspection Note reveals that as per the revenue records major portion of the land allotted to Respondent No. 9 was paddy field and the cadastral map of 1956 indicates that irrigation canal/*Rajakaluves* taking of from upstream Agara tank passed through the area of Respondent No. 9. However, after inclusion of the area in Bangalore Mahanagar Palika and construction of Sarajapur road abutting Agara lake, the area was not under cultivation and the outlets from the Agara Tank for supplying water for irrigation purposes was blocked and at present no evidence is available about the existence of irrigation canal/*Rajakaluves*. Therefore, though it was not possible to locate the exact location of the *Rajakaluves* irrigation canal which were in existence in the lands now belonging to Respondent No. 9, it is clear that there originally existed *Rajakaluves* which were later got obliterated. The report of the High Power Committee also shows that in the case of Respondent No. 9, "the excavated soil has been dumped into *Rajakaluves* and part of lake bed". Therefore it is clear that Respondent No. 9 had also tampered with the Rajakaluves.

38. The fact that the properties acquired and later allotted to Respondent No. 9 and 10 were agricultural land and they include *Kharab* lands also was not disputed. Condition No. 38 of the Environmental Clearance granted to Respondent No 9 which is identical to condition no. 41 of the Environmental Clearance granted to Respondent No. 10 provides that *Kharab* land cannot be used for any other purpose except for maintaining as green belt area. Condition no. 38 reads

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

39. Though the Learned Senior Counsel appearing for Respondent No. 9 argued that as the land was acquired in 2000 for industrial use and notified for industrial use and therefore when the land was taken by KIADB in 2004 it did not emerge from any record that any portion of the project site stood designated as any class of *Kharab* lands and when the project site was handed over to the respondents there were no traces of any specified classes of *Kharab* land that deserved protection , the Inspection Note on *Kharab* land reads as follows:

> *"5. Kharab Land details: As per the details furnished by the Revenue Department, one acre and 2 guntas of the land allocated to Respondent No. 9 – M/s. Mantri Tech. Zone falls in `C' Kharab land which means that it is yet to be classified under `A' Kharab or `B' Kharab land. With the present level of alteration to the topography and partial constructions already raised, the demarcation of especially `B' Kharab land is crucial to identify the structures that are illegal, however, for this first revenue department has to classify the `C' Kharab land into Caregory `A' and `B' first."*

40. In the light of the materials on record we cannot agree with the submission that no *Kharab* land is involved. Condition No 38 of the Environmental Clearance granted shows that it was specifically provided that "The project authorities shall not use kharab land, if any, for any purpose and keep available to the general public duly

displaying a board showing as public property. No structure of any kind be put up in the kharab land and shall be afforested and maintained as green belt only."

41. It is clear that Respondent No. 9 did encroach a portion of the lake and caused environmental degradation by putting debris, muck and excavated soil into the lake and *Rajakaluves* and even filled up the creek of the lake, which originally existed in the property and is therefore guilty of the environmental damage and degradation.

Discussion on Point No. 5 and 6 :

42. Based on the materials it was found in the main judgement that Respondent No. 10 had also started construction prior to the grant of Environmental Clearance, there is encroachment on *Rajakaluves* and Respondent No. 10 has also caused environmental degradation. The report submitted by the High Power Committee shows that Respondent No. 10 has not started any construction activity. The inspection note prepared by the Expert Members shows that in the case of Respondent No. 10 it was noted as follows.

43. "So far construction has not been raised. Only preparatory excavation work has been carried out. However as far as the issue of *Kharab* land, proximity to Rajkaluves, presence of irrigation channels on originally allotted agricultural land etc. was common as in the case of Respondent No. 9".

44. On traffic congestion which is common to Respondent No. 9 and 10 the inspection report reads

"the traffic density on Sarjapur road falls in category 'C' i.e. overloaded, whereas with the proposed SEZ, it is expected that the traffic in the area will become very poor performance in terms of level of service. As per the lease agreement with KIADB, the project proponent is to upgrade 2 Kms. of this stretch of road to 6 lane road and build an under-pass and over-bridge to reduce the traffic congestion; however, in the meantime, a flyover has already been raised by the Government, thus, the entire issue requires a fresh look."

45. The fact that Respondent No. 10 has also started preparatory excavation work and excavated soil was dumped on the *Rajakaluves* is absolutely clear from the available materials. Materials on record establishes that Respondent No. 10 commenced the construction work before the Environmental Clearance granted as they have already excavated the soil, levelled the low lying area and levelled the plot. Though the Learned Senior Counsel appearing for Respondent No. 10 argued that the lake is far away from the land belonging to Respondent No. 10, and therefore it cannot be said that Respondent No. 10 caused any environmental degredation or damage to the lake, it is clear that the *Rajakaluves* is abutting the property of Respondent No. 10. It is also clear that after excavation of the soil the muck were dumped on the *Rajakaluves* and thereby reduced the width of the *Rajakaluves* and consequently caused

environmental degradation , though to a lesser extent than committed by Respondent No. 9. The Environmental Clearance was granted to Respondent No. 10 only on 03rd June, 2013. The case of the Respondent No. 10 is that after obtaining the Environmental Clearance, in view of the PIL filed before the High Court of Karnataka and grant of order of stay on 16th April, 2014, Respondent No. 10 did not proceed with the further construction of work. As excavation of soil forms part of the construction work and it was commenced prior to 03rd June, 2013 it is clear that Respondent No. 10 has also illegally commenced the construction work before obtaining Environmental Clearance.

46. The learned senior counsel appearing for Respondent No. 10 argued that as per RMP 2015 the buffer zone required to be maintained from the lake is 50 meters from the edge of the lake and from the *Rajakaluves* it is 30 meters from the centre of the *Rajakaluves* and therefore there is no violation of dumping of excess soil in close proximity of *Rajakaluves*. In the Inspection Note, based on the inspection report of the Pollution Control Board it was stated that the said inspection report established dumping of excess soil in close proximity to the Rajkaluaves. Though Learned Senior Counsel would argue that as construction was not started, there cannot be dumping of soil, we have already found that there was excavation of the soil a fact which was not disputed. It is, therefore, clear that the excavated soil was dumped on the Rajakaluves. It is thus clear that Respondent No. 10 is also equally guilty as

Respondent No. 9, though it was of a lesser degree compared to that of Respondent No. 9.

Discussion on Point No. 8

47. We have already found that Respondent No. 9 and 10 had commenced construction of their projects prior to the grant of Environmental Clearance. No project activity could have been commenced without grant of an Environmental Clearance as provided under EIA Notification of 2006. It is also established that multiple *Rajakaluves* were flowing through the project sites and there was encroachment on the Rajakaluves. The condition No. 39 on natural sloping pattern of the project site was to maintain the natural hydrology of the area so as to ensure natural flow of storm water, which is to be protected and conserved was violated. As far as the Respondent No. 9 is concerned, they dumped muck and excavated soil on a portion of the lake with an intention to annex that portion to lake as part of their property. We have already discussed in detail the consequences of such activities on the environment and ecology, in the main judgement and therefore it is not necessary to reiterate the same once again.

48. The Hon'ble Supreme Court in M.C. Mehta Vs. Kamal Nath (1999) 1 SCC 702 considered the liability for causing pollution and health:

> *"24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to*

those who have suffered loss on account of the act of the offender. The powers of this Court under Article 32 are not restricted and it can award damages in a PIL or a writ petition as has been held in a series of decisions. In addition to damages aforesaid, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. Unfortunately, notice for exemplary damages was not issued to M/s. Span Motels although it ought to have been issued. The considerations for which 'fine' can be imposed upon a person guilty of committing an offence are different from those on the basis of which exemplary damages can be awarded. While withdrawing the notice for payment of pollution fine, we direct a fresh notice be issued to M/s. Span Motel to show cause why in addition to damages, exemplary damages be not awarded for having committed the acts set out and detailed in the main judgement. This notice shall be returnable within six weeks. This question shall be heard at the time of quantification of damages under the main judgement."

49. The same matter again came up before the Hon'ble Supreme Court and then it was held in (2002) 3 SCC 653 as follows:

"*8. Even in the judgement of this Court, since reported in Kamal Nath while accepting the claim of the Motels that the sine qua non for punishment of imprisonment and fine is a fair trial in a competent court and that such punishment of imprisonment or fine can be imposed only after the person is found guilty by the competent court, a general and passing reference has also been made to the earlier findings and as a consequence of which only it has been again held that though no fine as such can be imposed and the notice issued by this Court earlier be withdrawn, a fresh notice was directed to be issued to Span Motels Pvt. Ltd. As to why in addition to damages, as directed in the main judgement, exemplary damages cannot be awarded against them "for having committed the acts set out and detailed in the main judgement". Equally, the object and purpose of such levy of exemplary damages was also indicated to serve as "a deterrent for other not to cause pollution in any manner". Having regard to what has been stated supra, the question as to the imposition of exemplary damages and the liability of Span Motels Pvt. Ltd. In this regard has to necessarily depend upon the earlier findings of this Court that the Motel by constructing walls and bunds on the river banks*

and in the river bed as detailed in the judgement has interfered with the flow of the river and their liability to pay the damages on the principle of "polluter pays" and also as an inevitable consequences thereof. The specification in the NEERI report regarding details of the activities of M/s. Span Motels Pvt. Ltd. and the nature of constructions made in 1993 in Figure 2 that (a) "in 1993, to protect the newly acquired land as also the main resort land, SMPL constructed concrete studs, stepped wall and concrete bars as depicted in Figure 2"; (b) "blocked the mouth of the natural relief/spill channel by dumping of boulders" resulting in the levelling of the leased area; and (c) "at the downstream of M/s. SMPL, a private property-owner has blocked the relief/spill channel by constructing a stonewall across the channel (E and F)" also confirms and only reinforces the need and justification for the indictment already made. The basis for their liability to be saddled with the exemplary costs has been firmly and irreversibly already laid down in the main judgement itself and there is no escape for Span Motels Pvt. Ltd. in this regard. We have to necessarily proceed further only on those bases of facts and position of law, found and declared."

50. The damages that can be awarded in an action based on tort may be nominal, ordinary or exemplary. While the primary object of award of damage is to compensate victim for the harm done to him, secondary object is to punish the offender for his conduct in inflicting the harm. In addition to the normal compensatory damages which are variously called exemplary damages, punitive damages, vindictive damage or retributory damages could also be awarded. Such damages are awarded where it is found that the conduct of the offender is outrages and discloses malice, cruelty or the like.

51. In Halsbury Laws of India Volume 9 Page 16

General and Special damages are explained as follows:

"General and special damages *- A distinction is frequently drawn between the terms 'general' and 'special' damages, which are used. In the context of liability for loss*

(usually in contract), general damages are those which arise naturally and in the normal course of events, whereas special damages are those which do not arise naturally out of the defendant's breach and are recoverable only where they were not beyond the reasonable contemplation of the parties (for example, where the plaintiff communicated to the defendant prior to the breach the likely consequences of the breach). Special damages do not mean serious damage in the sense of irreparable loss but damage affecting the plaintiff individually or damage peculiar to the plaintiff or beyond what is suffered by him in common with orders. In particular actions, for example, slander and public nuisance, all damages are special damages.

Indiscriminate use of the terms 'general damages' and 'special damages' in varying contexts has blurred the distinction between them. However the difference can be better elucidated in the context of three distinct issues which arise in the award of damages in an action by a plaintiff.

The first distinction between these terms is underscrored in issues relating to liability. 'General damages' is usually the term which relates to damages arising in the normal course of things, principally in cases of breach of contract. 'Special damages', however, covrs the category of damages arising out of special and extraordinary circumstances beyond the reasonable contemplation of the parties.

The second contrast arises in issues relating to proof of damage. General damages are those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms, for example, damages for harm to reputation in actions for defamation and damages for pain and suffering in actions relating to personal injury. In comparison, special damages, in this context, are those losses which can be calculated in financial terms; these are generally pecuniary losses calculable at the time of trial, for example, claims for loss of earnings, whether past or future, or the cost of care in personal injury actions.

The third context in which the distinction arises relates to pleadings. Special damage refers to those losses which must be proved by evidence, and particulars of the special

damage claimed must be specified in the plaint, whereas general damage is that which will be presumed to be the natural or probable consequences of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered and quantification is left to the court."

52. Compensatory damage is to compensate the plaintiff in terms of money for the damages caused to him by the defendant. The plaintiff is thus compensated for the actual loss suffered by him by the award of compensatory damages, either for breach of contract or for tort whether for pecuniary or non-pecuniary loss. Non-compensatory damages are damages over and above compensatory damages and are based on a different scale. The court may award non-compensatory damages either because there is no injury or damage caused or to punish the defendant for his conduct in inflicting harm to the plaintiff, in addition to the normal compensatory damages. Pecuniary damages are damages paid in respect of damage which can be estimated in and compensated by money. They are damages for all such loss, deprivation or injury as can be made the subject to calculation and of recompense in money and may include loss of earnings, loss of future earning, loss due to damage to goods, loss on breach of contract for sale of goods, loss of profits, expenses of medical treatment or cost of repair or replacement. Non-pecuniary damages are damages for loss or injury, which is not assessable arithmetically by and are generally awarded in actions for tort. This may include damages for personal injuries including pain and sufferings, loss of amenities, physical inconvenience and discomfort, damage to the reputation or

damages on account of social discredit or interference with enjoyment of property or mental distress. Consequential damages are damages which do not flow directly and immediately from the act of the party but as a consequence of a wrongful act which are so proximate as to be recoverable. Only such damages that are sufficiently proximate to the course of action as to be the natural consequence of the wrongful act, though even of an interim nature, are recoverable. Normal losses are the losses which every plaintiff will suffer such as general damage, while consequential losses are anything above the normal losses such as profits lost or expenses incurred through the breach and are recoverable if they are not remote. Nominal damages have been defined as a sum of money that may be spoken of but that has no existence in point of quantity or a mere peg on which to hang costs. The plaintiff is entitled to nominal damages where his rights have been infringed, though he has not sustained any actual damage from the infringement or he fails to prove that he has suffered damage or although actual damages has been caused, it arises from the plaintiff's conduct and not from the wrongful act of the defendant or the plaintiff bringing an action only to establish his right and he is not concerned to raise question of actual loss or damage. Nominal damages can be awarded in cases of breach of contract and in torts actionable per se. A small amount of money is awarded as nominal damages. The other class of damages is aggravated, exemplary or punitive damages.

53. In the Halsbury's Laws of India (Supra) at Page 23 they are explained as follows:-

> *"**Aggravated, exemplary or punitive damages** – In certain circumstances the court may award more than the normal measures of damages, taking into account the defendant's motives or conduct. Such damages may be 'aggravated' damages' or 'exemplary damages'.*
>
> *Aggravated damages are compensatory in nature, in that they compensate the victim of a wrong for mental distress, or injury to feelings, in circumstances in which that injury has been caused or increased by the manner in which the defendant committed the wrong, or by the defendant's conduct subsequent to the wrong.*
>
> *Exemplary damages are punitive in nature and are awarded to punish the wrong doer and not to compensate the plaintiff for any loss.*
>
> *The Indian courts have been reluctant to award punitive damages and the view taken is that if the offender has to be punished then recourse must be had to the penal law. However, exemplary damages have been awarded by courts in cases of breach of duty by public functionaries, to protect the fundamental rights of the citizen, or for misfeasance in public office because it is an accepted principle and oppressive, arbitrary or un-constitutional action by the government or its servants calls for exemplary damages. Awards of exemplary damages must, however, be made sparingly. If official power has been exercised in a bona fide manner, exemplary damages should not be awarded despite the fact that unintended injury is caused to someone.*
>
> *Exemplary damages may also be awarded in cases where the defendant has calculated to make a profit for himself which may exceed the compensation payable to the plaintiff, and this extends to cases where the defendant is seeking to gain some object at the plaintiff's expense."*

54. The Constitutional Bench of the Hon'ble Supreme Court in M.C. Mehta and Another Vs. Union of Indian and Others (1987) 1 SCC 395, considered the environmental damage caused and held

that the enterprises must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of the such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that harm occurred without any negligence on its part. It was also held that the quantum of compensation must be co-related to the magnitude and capacity of the enterprises because such compensation must have a deterrent effect. Their Lordship held:

> "32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise."

55. The Hon'ble Supreme Court in M/s. Sterlite Industries India Limited Vs. Union of India ((2013) 4 SCC 575) following the said Constitution Bench decision held:

> *"47 In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled "Financial Performance":*
>
> *"PBDIT for the financial year 2010-2011 was Rs. 1043 crores, 40% higher than PBDIT of Rs. 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation."*

Considering the magnitude, capacity and prosperity of the appellant Company, we are of the view that the appellant Company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant Company."

56. In the Deepak Nitrite Limited Vs. State of Gujarat and Others ((2004) 6 SCC 402) the Hon'ble Supreme Court held:

"6. The fact that the industrial units in question have not conformed with the standards prescribed by GPCB, cannot be seriously disputed in theses cases. But the question is whether that circumstances by itself can lead to the conclusion that such lapse has caused damage to environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. May be, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of "polluter-to-pay" principle has got to be practical, simple and easy in application. The appellants also do not contest the legal position that if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid."

57. The Hon'ble Supreme Court in Goa Foundation Vs. Union of India and Others ((2014) 6 SCC 590) directed to deposit 10% of the cost of the project at the first instance as environmental damage. What was directed was to deposit 10% of the value of the mineral extracted.

58. Following polluter pays principle and the guidelines settled in the above decisions this Tribunal in Sarang Yadwadkar & Ors. Vs. Commissioner, Pune Municipal Corporation and Others, 2013 All

(1) NGT Reporter (Delhi) 299 directed to pay the environmental damages. In Krishan Kant Singh Vs. National Ganga River Basin Authority 2014 All (1) NGT Reporter 3 (Delhi) 1, the Tribunal directed the Sugar Mills which had operated without consent of the Pollution Control Board and polluted the environment, to pay a compensation of Rs. 5 Crore. That decision was confirmed by the Hon'ble Supreme Court by order dated 21st January, 2015 in Civil Appeal No. 10434 of 2014.

59. Section 20 of the National Green Tribunal Act, mandates that while passing any order or decision or award the Tribunal, shall apply the Principles of Sustainable Development, the Precautionary Principles and the Polluter Pays Principles.

60. Therefore applying Polluter Pays Principle and the settled guidelines settled in the decisions of the Hon'ble Supreme Court and that of the this Tribunal refereed to earlier, Respondent No. 9 and 10 who caused environmental degradation are liable to pay the environmental compensation as have been already found in the main judgement.

61. Then the question is on the quantum of compensation Respondent No. 9 was directed to pay 5% of the cost of the project as compensation by the Main Judgment. It was found to be a sum of Rs. 117.35 Crores. We find no reason to vary, reduce or modify the same considering the nature of the environmental degradation caused by the Respondent No. 9 in magnitude and capacity of the project proponents and also the necessity to have a deterrent effect.

62. As far as Respondent No. 10 is concerned he was directed to pay a compensation of Rs. 22.5 Crores being 5% of the cost of the project in Main Judgement. Considering the fact that compared to Respondent No. 9, Respondent No. 10 has not commenced the actual construction activity. But they have carried out various preparatory work including excavation and depositing huge quantity of earth, creating a helloek at the premises and thereby caused environmental degradation. In the interest of justice we reduce the compensation originally fixed in the Main judgment and direct Respondent No. 10 to pay an environmental compensation of 3% of the cost of the project instead of 5% imposed. Respondent No. 10 is therefore directed to pay an environmental compensation of Rs. 13.5 Crores.

63. On the facts and in the light of the materials on record we find that it is absolutely necessary to issue the following general and specific directions.

*"**General Conditions or directions:***

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

(i) *In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.*

(ii) *50m from the edge of the primary Rajkulewas.*

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

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

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

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

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

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

i. *At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due*

consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.

ii. *All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.*

iii. *Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.*

Specific Conditions / Directions for Respondent 9;

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

i. *Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey no. 43 should be restored to its original condition at the cost of project proponent.The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.*

ii. *In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt.*

iii. *Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent no. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. Howeveron account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agaralake and the Belandur Lake, respondent no. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.*

iv. *The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara*

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

v. *The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.*

vi. *The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.*

vii. *In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density,foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.*

10. *Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.*

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

13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

General Directions:

1. *We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.*
2. *SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.*
3. *The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/ wetlands in the city of Bengluru.*
4. *We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.*
5. *Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.*
6. *There is a serious discrepancy even in regard to the measurement of land as far as Respondent no. 9 is*

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

7. *Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.*
8. *The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance."*

64. The Original Application No. 222 of 2014 and Miscellaneous Application Nos. 596/2016 and 603/2016 are finally disposed of. Parties to bear their own costs.

.....,CP
(Swatanter Kumar)

.....,JM
(M.S. Nambiar)

.....,EM
(Dr. D. K. Agrawal)

.....,EM
(Prof. A.R. Yousuf)

.....,EM
(B.S. Sajwan)