

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

**Original Application No. 171 of 2015**  
**(M.A Nos. 510/2015, 1148/2015 & 1108/2016)**

**And**

**Appeal No. 148/2015**  
**(M.A Nos. 1325/2015 & 1326/2015)**

**And**

**Appeal No. 05/2016**  
**(M.A Nos. 56/2016 & 64/2016)**

**And**

**Appeal No. 24 of 2016**  
**(M.A No. 399/2016)**

**IN THE MATTER OF:**

**1. PandalaneniSrimannarayana**

S/o Shri P. Anjaiah  
R/o H.No. 169, LIG  
VUDA colony, Kandrika  
Vijayawada, A.P-520001

**2. AnthatiKamalakar**

S/o Shri A. Ramanaih  
H.No. 16/3/487  
V.K Street,  
Nellore, A.P-524001

.....Applicants/Appellants

*Versus*

1. State of Andhra Pradesh  
Through its Chief Secretary  
A.P State Secretariat,  
Hyderabad-500001
2. Andhra Pradesh Capita Region Development Authority  
Through its Commissioner  
Vijayawada, A.P-520001
3. Ministry of Environment, Forest and Climate Change  
Through its Secretary  
Indira ParyavaranBhavan,  
JorBagh Road  
New Delhi-110003
4. Ministry of Urban Development Affairs  
Through its Secretary  
NirmanBhavan, New Delhi-110001

5. Ministry of Water Resources, River Development and Ganga Rejuvenation  
Through its Secretary  
Shram Shakti Bhawan  
Rafi Marg, New Delhi-110001

.....Respondent(s)

**And**

**EAS Sarma,**  
14-40-4/1, Gokhale Road,  
Maharanipeta,  
Visakhapatnam-530002

.....Appellant

*Versus*

1. Union of India  
Ministry of Environment and Forest and Climate Change,  
Through its Secretary,  
Indira Paryavaran Bhavan, मत्स्यमेव जयते  
JorBagh, Aligunj,  
New Delhi-110003
2. State Environment Impact Assessment Authority  
Andhra Pradesh, Government of India,  
Ministry of Environment and Forests,  
Through the Member Secretary,  
A-3, Industrial Estate,  
Sanathnagar, Hyderabad-500018
3. Andhra Pradesh Capital Region Development Authority  
Lenin Center, Governor Pet,  
Vijayawada,  
Andhra Pradesh-520002
4. Andhra Pradesh State Pollution Control Board  
Through the Member Secretary,  
A-3, Industrial Estate,  
Sanathnagar, Hyderabad-500018

.....Respondent(s)

**And**

**1. Satyanarayana Bolisetti**  
7B, Girdhar Apartments  
Firozshah Road New Delhi-110001

**2. Pandalaneni Srimannarayana**  
S/o Shri P. Anjaiah  
R/o H.No. 169, LIG  
VUDA colony, Kandrika  
Vijayawada, A.P-520001

.....Appellant(s)

*Versus*

1. State Level Environment Impact Assessment Authority (SEIAA)  
Andhra Pradesh  
Through its Member Secretary  
A-3, Industrial Estate,  
Sanathnagar, Hyderabad-500018

2. Union of India  
Ministry of Environment and Forest and Climate Change,  
Through its Secretary,  
Indira Paryavaran Bhavan,  
JorBagh, Aligunj,  
New Delhi-110003

3. Andhra Pradesh Capital Region Development Authority  
Through its Commissioner  
Vijayawada, A.P-520001

4. Andhra Pradesh State Pollution Control Board,  
Through the Member Secretary  
A-3, Industrial Estate,  
Sanathnagar, Hyderabad-500018

.....Respondent(s)

**And**

**EAS Sarma**  
14-40-4/1, Gokhale Road,  
Maharanipeta,  
Visakhapatnam-530002

.....Appellant

*Versus*

1. Union of India  
Ministry of Environment and Forest and Climate Change,  
Through its Secretary,  
Indira Paryavaran Bhavan,  
JorBagh, Aligunj,  
New Delhi-110003

2. State Environment Impact Assessment Authority  
Andhra Pradesh, Government of India,  
Ministry of Environment and Forests,  
Through the Member Secretary,  
A-3, Industrial Estate,  
Sanathnagar, Hyderabad-500018

3. Andhra Pradesh Capital Region Development Authority  
Lenin Center, Governor Pet,  
Vijayawada,  
Andhra Pradesh-520002

4. Andhra Pradesh State Pollution Control Board  
Through the Member Secretary,  
A-3, Industrial Estate,  
Sanathnagar, Hyderabad-500018

.....Respondent(s)

## **COUNSEL FOR APPLICANTS/APELLANTS:**

### **Original Application No. 171 of 2015**

Mr. Sanjay Parikh, Ms.Parul Gupta, Mr.Mr.Sravan Kumar and Ms.Ninni Susan Thomas, Advs

### **Appeal No. 148/2015**

Mr. Rahul choudhary, Ms.MeeraGopal and Mr.Utkarsh Jain, Advs.  
Mr.Saurabh Sharma, Adv

### **Appeal No. 05/2016**

Mr. Sanjay Parikh, Ms.Parul Gupta, Mr.Mr.Sravan Kumar and Ms.Ninni Susan Thomas, Advs

### **Appeal No. 24 of 2016**

Mr. Rahul choudhary, Ms.MeeraGopal and Mr.Utkarsh Jain, Advs

## **COUNSEL FOR RESPONDENTS:**

### **Original Application No. 171 of 2015**

Mr. A.K. Ganguli, Sr. Adv. with Mr. D. Srinivas, AG, Mr. Guntur Prabhakar and Mr. Guntur Pramod Kumar, Advs. For respondent no. 1&2

Mr. A.K. Prasad and Mr.JaydipPati, Advs. Mr. Kumar Shashank, Adv. for intervenorAmranatiRajdhani and SamukaraRaithivSamakya Mr. Nikhil Nayyar and Ms.Smriti Shah, Adv. for APPCB

Mr.Taruna A. Prasad, Adv. Mr. Rahul Pratap, Advs. for MoEF

Mr.VishwendraVerma, Mr.YogeshRathi and Ms.SikhaPoddar, Advs. For MoEF

### **Appeal No. 148/2015**

Mr. Rahul Pratap, Advs. for MoEF for respondent no.1

Ms.Pruna Singh, Adv. for SEIAA for respondent no.2

Mr. A.K. Ganguli, Sr. Adv. with Mr. D. Srinivas, AG, Mr. Guntur Prabhakar and Mr. Guntur Pramod Kumar, Advs. For respondent no. 3

Mr. Nikhil Nayyar and Ms Smriti Shah, Adv. for APPCB

Mr.VishwendraVerma, Mr.YogeshRathi and Ms.SikhaPoddar, Advs. For MoEF

### **Appeal No. 05/2016**

Ms.Pruna Singh, Adv. for SEIAA for respondent no.1

Mr. Rahul Pratap, Advs. for MoEF for respondent no.2

Mr. A.K. Ganguli, Sr. Adv. with Mr. D. Srinivas, AG, Mr. Guntur Prabhakar and Mr. Guntur Pramod Kumar, Advs. for respondent no. 3

Mr. Nikhil Nayyar and Ms Smriti Shah, Adv. for APPCB

### **Appeal No. 24 of 2016**

Mr. A.K. Ganguli, Sr. Adv. with Mr. D. Srinivas, AG, Mr. Guntur Prabhakar and Mr. Guntur Pramod Kumar, Advs. for respondent no.3

Mr. Rahul Pratap, Advs. for MoEF

Ms.Pruna Singh, Adv. for SEIAA

Mr. Nikhil Nayyar and Ms Smriti Shah, Adv. for APPCB

## **JUDGEMENT**

### **PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**  
**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**  
**Hon'ble Mr. Bikram Singh Sajwan (Expert Member)**

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**Reserved on: 20<sup>th</sup> April, 2017**  
**Pronounced on: 17<sup>th</sup> November, 2017**

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

### **RAGHUVENDRA S. RATHORE J (JUDICIAL MEMBER)**

**1.** The applicant/appellants have raised a common question in respect to the formation of a new capital city for State of Andhra Pradesh. As all these matters raise a similar question that they were heard together. Therefore, it is deemed appropriate to decide the cases by a single order.

**2.** The applicants had approached the Hon'ble Supreme Court in Writ Petition (Civil) No. 99 of 2015 seeking intervention to protect environment as well as right to life of the people which would be adversely affected due to the establishment of the new capital region. The said petition was heard on 20.03.2015, and the Hon'ble Court disposed of the Writ Petition as withdrawn, with liberty to the petitioners to approach an appropriate forum by filing a proper application/petition for the relief.

**3.** The applicant/appellants have now invoked the jurisdiction of this Tribunal under Section 14(1) of the National Green Tribunal Act, 2010 to draw its attention to the Plan of State of Andhra Pradesh to build a Green Field

New Capital namely; Amravati as it poses a serious threat to the environment and a large population. Therefore, the applicant has sought directions against State of Andhra Pradesh and Andhra Pradesh Capital Region Development Authority not to undertake any developmental activities, including urbanization or raising infrastructure on river flood plain, wet land and fertile agricultural lands which are part of the river catchment area. Further, directions have been sought against the Ministry of Environment, Forest and Climate Change (MoEF& CC) to constitute an Expert Committee consisting of independent experts from reputed institutions holding expertise on river ecology and hydrology, to undertake a comprehensive Environmental Impact Assessment due to large scale urbanization as well as infrastructure development in the region and also assess the social and livelihood impact of the said activities on people including the farmers and fishing communities. It has also been requested that all the respondents be directed to delineate hundred years flood line on both the banks of river Krishna before undertaking any development in the region.

**4.**The appellants in appeal No. 148/2015 have prayed for quashing of the environmental clearance granted to the project. The appellants in Appeal No. 5 of 2016 has also prayed for quashing of said environmental clearance dated 9th October 2015 granted by SCIAA to APCRDA for

establishment of Green Field Capital City Amravati in an area for 217.23 square Km in Thulluru, Tadepalli and MagalgiMandals of Guntur district. The appellant No. 24 of 2016 has also prayed for quashing of environmental clearance granted for the project.

**Brief Facts:**

**5.** The State of Andhra Pradesh, respondent no.1, has been reorganized in terms of Andhra Pradesh Reorganization Act, 2014. The Act of 2014 was published on 01.03.2014. Under the Act a new State of Telangana came into existence on 02.06.2014. The Act further gives that Hyderabad would be a common capital for State of Telangana and State of Andhra Pradesh for the period of 10 years. After expiry of the time there would be a new Capital for the State of Andhra Pradesh. Section 6 of the Act, of 2014 contemplates for constitution of an Expert Committee by the Central Government for setting up a capital of Andhra Pradesh.

**6.** In pursuance of the provisions of the said Act, an Expert Committee was appointed by Government of India, Ministry of Home Affairs on 28.03.2014 to study various alternatives regarding new capital city. As per the terms of reference, the Committee was asked to consider issues like the least possible dislocation to existing agricultural system, preservation of local ecology, promoting environmentally sustainable growth, minimizing the cost of construction

and acquisition of land, etc. The said Committee had submitted its report on 28.08.2014. The report was prepared after holding meetings with the stakeholders, public consultations, analysis of possible location and considering the capital administrative functions. The Committee while analyzing various locations discussed about the feasibility of locating capital city between Guntur and Vijaywada.

**7.** The State Government had thereafter issued order dated 30.12.2014 identifying location of the capital city between Vijaywada and Guntur on the banks of river Krishna. Under the Notification, the Government has notified an area of about 7068 sq. km for capital region and 122 sq. km as Andhra Pradesh capital city. Soon after identification of the capital region, the State Government proposed for large scale urbanization in the area. In pursuance thereof, the State Government issued order dated 01.01.2015 notifying the Andhra Pradesh Capital City Land Pooling Scheme (Formation and Implementation) Rules, 2015. Under the Scheme, Andhra Pradesh Capital Region Development Authority is to procure land by signing agreement with land owners and farmers for minimal prices.

**8.** The **case of the applicant/appellant** is that in the areas like TullurMandal of district Guntur, acquisition of some of the best fertile land is taking place. The land



pooling scheme is facing opposition by the farmers as it would bring to an end the agricultural sector in the region.

It is stated that Singapore is working in partnership with Andhra Pradesh under the Memorandum of Understanding signed on 08.12.2014. Surbana International Consultants and Jurung consultants are the master planners. The initial Master Plan shows that the capital city is spreading on both the sides of river Krishna to the extent of 7325 sq. kilometers. As per the said plan, the Government has proposed large scale urbanization on the areas which comprises of flood plains, wet lands and agricultural lands.

According to the applicant/appellants, the State Government is in the process of acquiring about 1 lakhs acres of land along the banks and catchment areas of river Krishna for undertaking large scale urbanization without there being any EIA of the same and it poses serious threat to the environment of the catchment area of river Krishna. The area identified by the Government comprises of those regions which had observed heavy flooding on several occasions in the past.

**9.** The capital city involves Tullur and Tadepalli Mandals. The soil in this area is rich in agriculture/horticulture/plantation/floriculture/vegetable crops of 110 varieties. Therefore, denuding this land and using the same for urbanization would certainly bring an

end to the agricultural sector and affect the food security of the State. District of Guntur and Krishna are dominated with black cotton soil which is highly unsuitable and uneconomical for building construction projects. In such case if any construction or development activity is undertaken on such type of soil, proper risk assessment is required to be done to prevent any future disaster. A number of dams and barrages on river Krishna has increased the intensity of floods in district of Guntur & Krishna. In the year 2009, these projects were responsible in aggravating the floods. It is further submitted that any construction activity in this region has to be analyzed carefully, keeping in mind the existing and proposed project on the river which can adversely affect this region during heavy rainfall.

**10.** Before acquiring the land under Land Pooling Scheme a detailed EIA study is required under the provision of the Environment Protection Act, 1986. It has been submitted that the formation of new capital city requires various developmental activities which include creation of various Government department. The population projections have been given by State of Andhra Pradesh saying that new capital city will have 20 million population, by the year 2050. Further, removal of thousands of acres of fertile agricultural lands would affect livelihood of many. The applicant also states that since the

State is at the initial stage of creating a new capital city and has a substantial period of time it should take into consideration a comprehensive environment impact assessment scheme. Large scale urbanization of the region would include a wide range of activities and all these activities require to undergo EIA under Section 5 of the Environment Protection Act, 1986. Main objective of such an assessment is to assess the potential environment impact of any project, it plays an important role in preventing any kind of environment disaster if the same is undertaken at the initial stage.

**11.** Floodplains are protected areas where no kind of developmental activity should be undertaken. Further, all human activities that directly or indirectly damage the river or degrade the water quality should be prohibited or regulated. River beds and river flood plains are integral part of river wet land system and plays an extremely important role in the water cycles, including recharge of ground water. Therefore if a river's drainage basin or flood plain is heavily urbanized, it becomes much more prone to flooding. The areas identified for development by the State of Andhra Pradesh comprises of several wetland which are required to be protected by taking into account their importance for various purposes. There are scientific researches which shows that disturbances of flood plains can lead to great ecological and economical loss. It is

submitted that flood plains are Ecotones that form a transition between aquatic and terrestrial environment. Hydrological connection facilitate the exchange of carbon and nutrients between the river channel and flood plain consequently influence the productivity of the entire river system. Therefore, protection of flood plains is very important.

**12.** In the present case also it is important because the area under question is also known for good agricultural production and is termed as rice bowl by the Expert Committee.

**13.** The floods in rivers are known to follow a periodicity in terms of their intensity. Planners use these flood lines for developmental planning in flood prone areas. Internationally hundred year return flood line has been accepted to form an integral part of rivers ecological system, where many of its ecological functions, including ground water recharge, self-cleansing hosting, varied form of plants and animals etc. take place. It has been recommended that this level of flood plain must be kept out of developmental planning in the interest both of the river as well as the proposed development, with notable exception like raising of bridges and seasonal farming by local people etc.

**14. The State of Andhra Pradesh, respondent no.1 as well as Andhra Pradesh Capital Region Development,**

**respondent no.2 has filed a joint counter affidavit** to the Original Application. It has been submitted that pursuant to the enactment of the Andhra Pradesh Reorganization Act, 2014, Hyderabad is to remain a common capital of both the States for a period not exceeding ten years. It is turning out to be very difficult to effectively govern and administer the State from Hyderabad. Therefore, the Government of Andhra Pradesh wants to shift all the government departments and institutions to the new capital, as soon as possible. Further it has been submitted that the committee which was constituted under the Act of 2014, had only analyzed the advantages and disadvantages of various places and had not put forth a case for choosing a particular place. After taking into consideration the reports and holding consultation with various stakeholders the Government of Andhra Pradesh has come to the conclusion that the present location is most suitable for construction of a new capital.

**15.** It has also been submitted by the respondent that to construct a capital city it should be considered that it is not only modern and developed, but also environmentally sustainable. The said development project will be undertaken in compliance of all relevant laws and after obtaining requisite environmental clearances. A decision was taken by the respondent to collaborate with Government of Singapore and the work of preparing the

master plan was entrusted to Surbana International Consultants, Singapore, which is leading consultancy firm that primarily focuses on providing green and sustainable urban solution in compliance with highest International environmental standards, with 50 years of experience. Further it is pertinent to point out that the decision with regard to the place of capital is a policy decision and lies exclusively in the domain of the State Government. It is a well settled principle of law that such a policy decision cannot be questioned in a court of law, except in a situation where a clear, cogent and specific case of legal mala fides can be made out.

**16.** It has been further submitted by respondent no.1 & 2 that the Notification dated 14.09.2006, being S.O. 1533, by the Ministry of Environment and Forest, lays down the procedure to obtain EC for all the projects, developmental activities, expansion etc. The EC is not only site specific but can be obtained once all the details with respect to the proposed project have been worked out. The process of processing the land is still underway. Thus it can be clearly seen that there is no final detailed plan as of now, but only a proposed master plan, for which no prior is EC is required. It has therefore been submitted that the stage for obtaining EC has not yet arrived.

**17.** In the counter affidavit it has been submitted that as per Section 6 of the Act, 2014, the Central Government

was to appoint an expert committee. It is pertinent to mention that the parliament was mindful of the fact that decision for location of State capital is the work of the State Government, hence the said committee was assigned only a recommendatory role, while the ultimate decision was to rests solely with the State Government. The identified area is well connected, with a major railway junction, two national highways, an airport and it has good road connectivity to different parts of the State and the country. The said area also has abundant water resources as these factors are extremely essential for development of any city. It has been further stated that all these facilities which are readily available, will not only ensure that there is no additional economic burden on the government but also minimize the impact on environment, which would have arisen by such fresh construction.

**18.** According to the respondents, environmental sustainability is the highest priority and various measures are being taken for conservation of water and protection of green cover. Further, measures are being taken to put in a world class system for solid waste management, sewage treatment, curbing air pollution by creating walkways, and cycle tracks to reduce the quantum of emission from vehicles. The land pooling scheme has been adopted to ensure landowners participation and partnership in the process of development and also to reduce the cost of

building, the capital, avoid vexatious litigation and undue time constrains.

**19.** It has been submitted by the respondent that the capital city area is located on the upstream of Prakasam Barrage and firmly protected by the right flood bank of river Krishna. It is further stated that the river has a well-defined regime course and its natural and manmade flood banks formed to a top bund level of +22.45 meters which is capable of confining flood discharges, with the exception of the delta areas and the capital city areas does not fall under the delta area. Henceforth, the capital city area is not in an endangered zone. The only possible issue which may arise is that during very heavy rains, the water would spread in certain areas through Kondaveetivaghu which is small seasonal stream. However a hydrological survey is underway and detailed planning is being done to regulate the water and utilize it for the needs of the Capital City Area. The identified Capital City area is neither located in the flood plains nor prone to floods caused by river Krishna. The contentions of the applicant with regard to same are absolutely false and baseless. Respondents have stated that the location/ region identified for the capital city is at a minimal risk from earthquake and in fact with the advancement in technology related to building and construction, it can be safely said that there will be least risk to this area.



**20.** Respondents have submitted that the capital area will be at a distance of 60.30 KMs to 78.70 KMs from the nearest point of Bay of Bengal and is far away from the cyclone prone zone. It is further stated that the present location has been chosen after carrying out survey etc. and examining in detail the topography of the region, on the basis of which it has been concluded that the identified area is not vulnerable to any natural disasters.

**21.** Further, it has been submitted that the land covered by the capital city area are registered dry lands, as per revenue records, since 1908. As per the agricultural department, in the identified Capital City Area the total land sown during khariff in 2014 was 11,242 ha out of which 1266 ha had been paddy crop, as against the entire state of AP, where paddy crop was sown in 16,35,000 ha out of the total area of 41,01,000 ha. The sown area in the identified capital city Area is 0.077 % which clearly shows that the construction of capital will not have any effect on the food security of the State.

**22.** While considering **para wise reply** to the application, the respondents have submitted, in reply to paraIII, that the applicant has made vague allegation without adverting to any particular fact. Further the Applicant has wrongly stated that the Hon'ble Supreme Court, in the case of *Karnataka Industrial Area development*

*Board v. C. Kenchappa,(2006)6 SCC 371*, has held that there should be a proper EIA before acquisition.

**23.** In reply to para IV, respondents have submitted that in the proceeding before the Hon'ble Supreme Court, the Writ Petition filed by the Applicant herein, and his counsel was heard at length. The Hon'ble court declined to entertain the petition and observed that it is the prerogative of the State Government to decide where the capital should be located. At that juncture, when the Hon'ble court was dismissing the said petition that the counsel for the applicant sought leave to withdraw the same to approach the appropriate forum and accordingly it was decided.

**24.** In reply to para 1, the respondents have submitted that the application is premature, ill-conceived and motivated. At the time of filing of the present application even the master plan was not there and everything was at planning stage and it continued to be so, which itself shows that the applicant are pursuing their own agenda in the grab of being concerned for the environment and behind the cloak of the argument of *fait accompli*.

**25.** The respondents have replied to para 4, 5 & 6 of the application that the applicants have extracted only those portions of the report which according to them would further their cause and has conveniently ignored the rest of the report. The said report has to be read as a whole and upon an analysis of the finding arrived at by the committee,

it can be seen that the region where the capital area is proposed to be located is the most suitable and it fulfill all the criterias.

**26.** In reply to para 7, the respondents have submitted that the land pooling scheme was introduced with an intention to make the original land owners a part of the development scheme unlike in the case of land acquisition where they only get compensation as per the then prevailing market rates. The said scheme would be beneficial for both the land owner and the State Government.

**27.** The respondents have with reference to para 9 to 12 submitted that the proposed location of the capital city area is not in the flood plain or wetlands. This identified area is protected with proper natural/ manmade river bund and is not prone to floods by river Krishna. The applicant has erroneously stated that the government is going to acquire 1 lakh acre of land, while the truth is that no acquisition process has been initiated.

**28. The applicants have filed a rejoinder to counter the reply filed by respondent no. 1 &2.** At the outset it has been submitted that nothing should be deemed to be admitted by the applicant by virtue of not having been specifically denied herein. The respondents have admitted the fact that the master plan of the Capital region is still under consideration and not yet finalized, which clearly

shows that neither the master plan has been finalized nor any Feasibility study and Alternative Assessment study to assess whether the identified location is appropriate has been undertaken.

**29.** It has also been submitted by the applicant that the State Government decided to consult its own expert in urban development with regard to appropriate location of capital city and the location of the capital between Vijayawada and Guntur cities on the bank of river Krishna, which the Expert Committee constituted under the provisions of the Andhra Pradesh Reorganization Act, 2014 had disapproved. It is further submitted that when the statutory provisions give power to the Central government to make appropriate recommendations with regard to the new capital city, the state government cannot brush aside their recommendations as the same are the outcome of statutory provisions.

**30.** The State of Andhra Pradesh had under the said Act, decided to constitute an advisory committee. It is shocking that except the Chairman, two other members and the Member-Convener, all other 5 member are from business groups, and therefore the said order clearly shows that the Government has virtually handed over the development, which is the legal and constitutional obligation of the State Government, in the hands of private business houses.

**31.** It has been submitted by the applicant that they are dealing with these averments made in the reply affidavit in terms of their relevance and importance to the issues related to flood plain, river bed and Wetlands. No flood plain zoning law exists in the State of Andhra Pradesh. In Para 23 & Para 35 of the reply, the respondents have made a false statement that the capital city area is not within the wetlands or flood plains or that the location is not prone to floods from river Krishna. Looking at the location of the capital city, it will be a disaster for not only the river, tributaries, canal but also to the entire ecology of the area. It is further submitted that there are several judgments that the river banks and flood plains are required to be protected as they are a part of river ecology and no construction is therefore permissible.

**32.** Further, the applicants have submitted that at this juncture it is pertinent to mention that they are enclosing a hand-drawn map of the capital region. It can be seen from the map, drawn by the applicant with the help of expert that the capital region is located upstream as well as downstream of Prakasam Barrage. Therefore, there are series of dams along the network of canals in the entire area between Pulichinthala and Prakasam Barrage. On the left hand side of the said hand-drawn map is Guntur district and on the right hand side is the Krishna district

**33.** Another important question which arises in the present application is that some of the best agricultural lands in the country exist in this area. The respondents in Para 26 of the reply affidavit, instead of acknowledging the true factual situation, have cleverly referred to revenue records since 1908 to contend that the lands covered by the capital city area were registered in these records as “dry lands”. This reply is again false and misleading. Under the cover of land pooling scheme, authorities are pressurizing the farmers to give up their land and infact they are not being allowed to cultivate it which is resulting in grave injustice to them.

**34.** Another issue raised in the application is the requirement of Comprehensive Environment Impact Assessment studies for development of the new capital city of Andhra Pradesh. Unless there is a proper study undertaken about the cumulative impact assessment of all proposed development activities, Cost-Benefit Analysis and Social Impact Assessment of the same on people and their livelihood is being undertaken, the State cannot even go ahead with the process of procuring lands. It is submitted by the applicants that they have filed the application for implementation of the precautionary principle to prevent loss of public money, agricultural land, destruction to floodplains and wetlands which would be affected by the said development proposal.

**35.** It is also stated by the applicant that as per the respondent, the Master plan of the city is still to be finalized. Surprisingly, at a stage when the master plan of the region is still to be finalized, the Government and its agencies have already started the process of land procurement. It is important to point out that unless the master plan is finalized there can be no acquisition of land by the Government or its agencies. The measures undertaken by the Government, in lieu of formation of the new Capital city, are arbitrary; it has failed to recognize the rights of the communities and the impact of the development activities on the environment. It has also been stated by the applicants that in para 10 of the reply affidavit it has been stated that no prior EC is required since the master plan of the Capital city is still under consideration. The applicants have submitted that on one hand, the respondents contend that the master plan itself is under preparation and the question of getting EIA clearance will come much later, on the other hand, they are going ahead with cutting the tree and leveling the ground.

Therefore, the applicants have prayed that on the basis of the submissions made in the rejoinder, directions prayed in the Original Application may be granted by the Tribunal.

**36.** The **Ministry of Urban Development, respondent no.4** has submitted that the averments made in para 1 are

factually incorrect and baseless, as the Bay of Bengal is approximately more than 100 kms away from the proposed site of the New Capital City. The master plan prepared would take care of the environmentally and ecologically fragile areas such as flood plains, river banks, etc. notifying them as development zone.

**37.** With reference to para 5 of the application, the respondents have submitted that it incorporates the details of the expert committee report, wherein the committee, out of the three approaches followed that expanding cities is one of the possible option, accordingly to cater needs of capital city the existing VGTM urban area will be most suitable option.

**38.** Para 7 of the application are denied as incorrect and baseless. The land pooling mechanism is mutually beneficial and voluntary in nature, unlike land acquisition which is compulsory. In reference to para 15, 16, 17 & 18 respondents have submitted that keeping in view the concern for flooding, the Andhra Pradesh Department of Municipal Administration has declared the floodplains area in and around river water bodies or no construction or restricted construction zone. Hence merit no comments from the answering respondent.

**39.** In so far as the prayers made in the application, the respondents have submitted that no relief has been prayed by the applicant against the answering respondent.



Therefore, the Tribunal may pass appropriate orders as deem fit and proper in the interest of the justice and on the basis of the replies of other answering respondents. The Respondent No. 4 may be exempted from further appearances in the case.

**40.** The primary **contention** raised by the applicant is that the capital city area is within the flood plain of river Krishna and its tributaries which poses a serious threat to the environment and endangering the safety of human life, as well as to their property, due to flooding. The applicants have provided, in support of his submission, copies of Flood Inundation Map of river Krishna prepared by Andhra Pradesh State Development Planning Society, Planning Department, Government of Andhra Pradesh showing that Mandals such as Tullur, Tadepalli, Amaravati on Guntur side and Kanchikacharla, Vijiyawada rural and Ibrahimpatnam on the side of river Krishna, are prone to inundation. Further it has been submitted that 10,600 acres of land, within the capital city planning area, are inundated two or three times annually due to monsoon.

It has also been contended by the applicant that the number of dams and barrages on river Krishna have increased the intensity of floods in district Guntur and Krishna. If river's drainage, base and flood plain is heavily urbanized, it becomes more prone to flooding. The applicant has made references to some publications to

substantiate his submission of environmental importance of flood plains.

**41.** Further the applicants have contended that the wet lands around capital city area are required to be protected due to their role in providing water for agriculture, as a water harvesting structure, fisheries, flood regulation, pollution abatement and supporting rich biodiversity. Applicants have provided extensive quotes regarding the environmental importance and role of wet lands from the “Status of Wet Lands in India: A review of extent, ecosystem benefits, threats and management strategies” from University of Delhi and Institute for Resources Analysis and Policy Journal of Hydrology: Regional Studies (2014).

The applicants have also provided the Ramsar Conventions definition of wet land, which is “areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static, flowing, fresh, brackish, or salt including areas of marine water, the depth of which during low tide does not exceed 6 m.” These areas include river beds and river flood plains which are integral parts of riverine wet land system.

**42.** It has been argued on behalf on the applicants that there are several vaghus in the capital city area. Out of a total area of 13500 acres, 10500 acres fall within the planning area of the capital city. The total catchment area is 453.05 sq. Km. Kondaveetivaghu originates from

Kondaveedu hill range and joins river Krishna upstream of existing Prakasam Barrage. It is meandering rivulet. The applicants have contended that the State cannot tinker with the natural course of the river. It cannot straighten the river or widen it and cause permanent damage. Further it has been submitted by the applicants that a low lying area of 10500 acres will be utilized by the respondents for the purpose of development, thereby permanently and irreversibly damaging this area which is extremely fertile due to continuous alluvial deposit by flooding of KondaveetiVaghu.

**43.** The applicants have also contended that the capital city involves Tullur and Tadepallimandals. The soil in this area is rich in horticulture, plantation, floricultural/vegetable crops of 110 varieties. Therefore, denuding this land and using the same for urbanization would certainly bring an end to the agricultural sector and affect the food security of the State. The districts of Guntur and Krishna are dominated with black cotton soil which is highly unsuitable and uneconomically for building projects. Therefore, in case any construction or development activities are undertaken on such type of soil, proper risk assessment is required to be done, to prevent further disaster. It is submitted by the applicants that the expert committee has also so indicated, after taking into account the vulnerable soil type. Before taking a land under the

land pooling scheme a detailed EIA study is required under the provisions of Environment Protection Act 1986. The formation of new capital city requires various developmental activities which include creation of various Government departments.

The population projection has been given by the State of Andhra Pradesh by saying that the new capital city will have 20 million populations, by the year 2050. This will result in further removal of thousands of acres of fertile agricultural land and thus affecting the livelihood of many. It has been further submitted that since the State is at the initial stage of creating a new capital city and is having substantial period of time, it should take into consideration a comprehensive environment impact assessment scheme.

The land pooling scheme is completely against the provisions of the Environment Protection Act 1986 and there are various orders and directions of the Hon'ble Supreme Court and this Tribunal, pertaining to the same. Under the land pooling scheme the State Government is acquiring some of the best fertile land for agriculture in the country. Till date no assessment has been made of the negative consequence which would be caused due to conversion of agricultural land for urbanization, on such a large scale. The farmers would be left with no remedy except to depend on the compensation packages decided by the State Government without any proper bases.

**44.** The learned counsel for the applicant has further submitted that under the cover of land pooling scheme, authorities are pressurizing the farmers to give up their land and they are not being allowed to cultivate the same which is resulting in grave injustice, besides putting their livelihood itself in peril. A large area is covered by river, ponds and other water features and the entire area is an agricultural belt which shows 543 Sq. Kg Mtrs. Of crop land. Krishna district is covered by hills, forest and prime agricultural land. The total fallow land in the project site is 6.68% and the total build up area covers approximately 5.18%. As districts of Guntur and Krishna which dominated with black cotton soil, it is highly unsuitable and uneconomically for building construction projects. In case any construction or development activity is undertaken on such type of soil, proper risk assessment is required to be done to prevent any further disaster. The expert committee also indicated for taking into account the vulnerability of the soil.

**45.** It has also been submitted on behalf of the applicant that despite specific observation of the expert committee, the State Governments, for reasons best known to it, issued GO No. 253 dated 30.12.2014 identifying location of the capital city between Vijayawada and Guntur and on the banks of river Krishna. The Government has notified an area of 7068 Sq. Kg. Mtrs. for capital region

and 122 Sq. Kg. Mtrs. for the capital of Andhra Pradesh. The expert committee had urged for a need of a EIA, as one of the critical issues to be considered for selection of the location of a capital city. However, the State Government while by passing the requirement decided for formation of capital city without analyzing negative impacts of the same on the existing environmental condition of the region. A large scale urbanization of the region would include a wide range of activities which requires to undergo EIA, under Section 5 of the Environment Protection Act, 1986. The main object is to assess the potential environment impact of the project, which plays an important role in preventing any kind of environment disaster, if the same is undertaken at the initial stage of planning the project or activity. The respondents have in clear terms admitted the fact that the master plan of the capital region is still under consideration and not yet finalized which clearly shows that neither feasibility nor alternative assessment study has been undertaken to assess whether the identified location is appropriate.

**46.** The applicant further contends that there is requirement of comprehensive environment impact assessment studies for development of the new capital city of Andhra Pradesh. Therefore, unless a proper study is undertaken for cumulative impact assessment of all proposed development activities, cost benefit analysis and

social impact assessment of the same on people and their livelihood is undertaken, the State cannot even go ahead with the process of procuring lands. The applicants have filed an application for implementation of the precautionary principles to prevent loss of money, agricultural land, destruction to flood and wet lands which would be affected by the said development proposal. Further, it is submitted that the master plan of the city is still to be finalized, whereas the Government and its agencies have already started the process of land procurement. Unless the master plan is finalized there can be no acquisition of land by the Government or its agencies. The measures undertaken by the Government for formation of the new capital city are arbitrary and it has failed to recognize the rights of the community as well as the impact of the development activities on the environment. The respondents have stated that no prior EC is required since the master plan of the capital city is still under consideration. On one hand the respondent says that as the master plan is still under preparation the question of getting EIA clearance does not arise, on the other hand they are going ahead with cutting of the trees and leveling the ground.

**47.** It has also been contended on behalf of the applicants that under Section 6 of Andhra Pradesh reorganization Act, 2014, State Government is required to

receive authorization from the Central Government, constituted under Act, in making its site selection for the new capital city. Respondent number 1 has failed to do so. The Andhra Pradesh Government's selection of VGTM region for Amravati is contrary to the recommendation of the expert committee and is invalid without its further approval. When the statutory provisions give power to the Central Government to make appropriate recommendations with regard to the new capital city, the State Government cannot brush aside such recommendations as they are outcome of statutory provisions. Respondent no. 1 and 2 did not seek approval but has rather, on receipt of the report, issued orders on 30.12.2014 identifying the site and 1.01.2015, establishing the land pooling scheme to acquire the land for new capital city.

**48.** On behalf of the applicants, several paras of expert committee report of August 2015 have been referred which expresses the concern of the committee about Government intention to select the site for new capital city, as disapproval of VGTM sites. The committee had expressed concern over the loss of fertile agricultural land and the dislocation of agricultural workers. High water table combined with the region's soil type can lead to severe problems of soil formation and soil bearing capacity. The impact of disruption of the regions, positive internal dynamics of development with the livelihood of



construction boom, haphazard development and over burdening stress on infrastructure, including water, sewage and roads. The Committee suggested that plan for developing the VGTM area as the capital city should be revisited. Urbanization of such vast region would require an environmental assessment.

**49.** The applicant in original application (OA No. 176 of 2015 and the appellants in the appeal (Appeal No. 148 of 2015 and Appeal No. 5 of 2016) have sought to contend that the selection of the capital city in Amaravati is not appropriate, inter-alia, on the ground that it would involve conversion of agriculture land on large scale and Shiva Ramakrishnan Committee did not recommend VGTM region for location of the capital city. Further it has been contended by the appellants, after relying on the report of CPCB titled as “National NBN Air Qualities Status Trends of 2012”, that the project area is highly polluted. The appellant have also contended that there was lack of jurisdiction and the authority was not competent to grant the environment clearance, mainly on the ground that the project includes development of certain category –A projects, namely, Airport, National Highways, Industrial Zone, common medical waste treatment and disposal facility and hazardous waste treatment and disposal facility. It has also been contended that there is no compliance of the TOR. Another contention raised by the

appellant is that the impact of the project on ecological sensitive area has not been studied. Similarly, the appellants have argued that the impact of project on agriculture and Socio-economy has also not been studied.

**50.** On the other hand, the learned counsel for **respondents have argued** that the capital city area is neither located in the flood plains nor prone to floods caused by river Krishna. Further, it has been submitted that there is a difference between active and passive flood plains. Similarly the learned counsel has differentiated between hydrological flood plains and geomorphical flood plains. The said map only depicted nature of surface and sub-surface area of the earth and the flood plain used in it. The EIA report have been used as geomorphological term and that is not an active flood plain. Further it has been submitted that the area selected for construction of the capital city falls within the ambit of inactive flood plain area and is safe from the floodsof river Krishna, mainly between the two bunds. Therefore, any construction activity in this area will not lead to any adverse effect.

**51.** It is also contended that the maps submitted by the applicant showing the probable flood inundation are not of sufficient resolution to accurately account for contours on the ground and existence of bunds which are less than 20 mtrs. The respondents have pointed to the National Disaster Management Guidelines on Management of Floods

published in January 2008 which maps at A 0.3 mtrs to 0.5 mtrs contours.

**52.** It has further been submitted that the capital city area is located on the upstream of Prakasam Barrage and are firmly protected by the right bank of river Krishna. The river has a well-defined regime course and it's natural as well as manmade flood banks formed by the bund, level plus 22.45 mtrs. are capable of confining flood discharges, with exception of delta areas and the capital city areas does not fall under it. Therefore the capital city area is not in an endangered zone. On behalf of the respondents it has been further submitted that the applicant themselves have admitted that International 100 years return flood line has been accepted for planning and development, and to form an integral part of river's ecological system. Thus the flood plain which is demarcated/delineated for 2009 year event can be declared as corresponding to the flood event, which is likely to occur once in at least 104 years based on 1901-2012 data and 124 years based on 1965-2012 data. Therefore, the area beyond the embankment/ bund can no longer be called as flood plains.

**53.** It is submitted that the proposed vocation of the capital city area is not in the flood plain or wet lands. The applicant has erroneously stated that the Government is going to acquire 1 lakh acre of land whereas the truth is that no acquisition process has even been initiated. It is

also submitted by the respondent that regulation of land use in flood prone areas, can have different consideration for buildings of public utilization like hospitals, commercial center which should be above the level corresponding to a 100 year frequency. Further these buildings should be above level corresponding to 50 year rainfall and the likely submersion. Public institutions should be above a level corresponding to 25 year flood or 10 year rainfall, with stipulation that all building vulnerable zone should be constructed on columns and stilts. The playground and parks can be located in areas vulnerable to frequent floods. Even the applicant has admitted that based on flood plain zoning, permissible development can take place.

**54.** The respondents have contended that KondaveetiVaghu flows only during the monsoon and remains dry for the rest of the year. The temporary inundation is not a natural phenomenon and has not occurred before 30 years. Last one was in the year 2014. The natural course of the vaghu has been altered due to encroachments as well as siltation. Thus the total area now available is 336 acres and 627 acres, including the green buffer. Since inundation is a temporary phenomenon, several ameliorative measures have been adopted to address the issue for example construction of detention pond/reservoirs to store the water and utilize it to meet the requirements of the proposed capital city. The

said stream has been dealt with extensively in the EIA report and was also considered by the State Expert Appraisal Committee and the State Environment Impact Assessment Committee. Only thereafter the EC has been granted. The EIA report has been wrongly interpreted that the entire capital city would be alleviated. EIA report with abundant caution, taking into consideration an extreme and unlikely scenario of a dam break upstream of river Krishna a level of plus 25 mtrs. has been contemplated for critical establishments.

**55.** It has been argued by the respondents that the land pooling scheme has been adopted to ensure land owner participation and partnership in the process of development; to reduce the cost of building capital; avoiding the vexatious litigation and undue time constrains. . The sown area in the identified capital city is 0.077% which clearly shows that the construction of the capital will not have any effect on the food security of the state.

The land pooling scheme was introduced with an intention to make the original land owners as part of the development scheme, unlike in the case of acquisition where compensation is given as per the prevailing market rates. The scheme would benefit both, the land owners and the State Government.

Further it has been submitted that the nature of soil in the capital city area is predominantly black cotton soil, where cotton, horticulture, etc. Maize with paddy are being grown in a negligible area of the capital city. A detailed study with regard to agricultural activities and productivity in the capital city have been studied and submitted to SEAC and SEIAA, as part of EIA report. Moreover in the area of capital city, spread across 217.23 Sq. Kilometers, farmers have volunteered to contribute approximately 34000 acres for the purpose. Under the scheme, the land owners will be provided with residential and commercial plots, apart from other benefits. The Central Government has also extended tax benefit to the owners who have given their land under the land pooling scheme.

**56.** The respondents have submitted that the notification of the Ministry of Environment of Forest dated 14.09.2006 lays down the procedure to obtain EC for all projects, development activities, expansion, etc. EC can be obtained once all the details in respect to the proposed projects have been worked out. The process of securing the land is still underway. Thus there is no detailed final plan as yet. There is only a proposed master plan for which no prior EC is required.

**57.** It has been submitted that environmental sustainability is the highest priority and authorization

measures are being taken for the conservation of water and protection of green cover. Steps are being taken to put in world class systems for solid waste management, sewage treatment, etc. Further, curbing of air pollution by creating walk ways along with the cycle tracks by reducing the emission from vehicles.

**58.** The respondents have submitted that on the recommendation of SEAC, the State Environment Impact Assessment Authority vide its order dated 09.05.2015 granted the EC for Amravati capital city. On 19.03.2016 the Environment Management Regulatory Authority had been set up vide APCRDA, as per the conditions of EC. All development activities and their environmental aspect are monitored by EMRA. On the concept plan, a draft master plan for the capital city was prepared, after taking into consideration all the laws, aspirations and demands of the people. The draft master plan was published in the newspaper and also in gazette on 26.12.2015, in compliance with the process contemplated under Section 39 of APCRDA Act, 2014.

The respondents have contended that EIA Notification dated 14.09.2016 classifies projects and activities broadly under two categories that is category A and B which requires prior EC from Central Government and SEIAA respectively. Amravati capital falls under category B. SEIAA, in its meeting held on 9<sup>th</sup> October 2015

accepted the recommendation of SEAC and granted EC,keeping in view the Principle of Sustainable Development.

**59.** The respondents have submitted that no airport is being contemplated under the city plan. Further, the project proponent is not the competent authority to contemplate development of any national highway. There are three industrial zones proposed in the city at three different locations and each of them is less than 500 hectares. As per the Schedule to the EIA Notification, all the projects falling under the head biomedical waste treatment facility are categorized as category B projects.

According to the counsel for the respondent,under Section 5.6 of AP Reorganization and Grants, the State Government is to select the new capital site and the expert committee only plays a recommendatory role. Therefore, approval from the expert committee to select a city is not required. The Expert Committee itself has noted that it is the prerogative of the State Government, including location of various capital functions.

The respondents have countered the contention of the applicant that the expert committee disapproved of locating the capital city in VGTM region. Respondents have asserted that the concern of the committee about the VGTM site selection were based on a per existing proposal of the erstwhile State of Andhra Pradesh, which was not yet



under consideration by the newly formed State of Andhra Pradesh. It is also submitted that the committee considered the earlier proposal which includes an area of 7600 sq. Kms of VGTM, whereas the capital city area will only comprise of 217.23 Sq. Kms.

**60.** The respondents have also argued that the expert committee considered four broad clusters of location in its analysis namely Vijawada-Guntur, Greater Vishakapatnam, Nellore, Triteriputi-Kalahasti in Rayalseema. The committee considered several factors to create a “District Sustainability Index” ranks cities within districts according to their risk (including natural hazards), connectivity, water availability, land (availability of scrub or waste land) and regional development. Vijawada, UA in the Krishna district, as well as Guntur city in Guntur District, both of which are in VGTM region, ranked as the first and second respectively in connectivity, first and third respectively in Regional development and second and third respectively in water resources. Respondents have contended that the capital city has been located in this area to benefit from those advantages.

**Discussion by the Court:**

**61.** The above mentioned detail facts and the contentions raised by the parties have been thoroughly considered by us. In view of the nature and importance of the matter where the question arisen before us relates to

formation of a new capital city for the State of Andhra Pradesh under the mandate of the Parliament through the Act of 2014, needs to be taken up in detail.

The Parliament had passed Andhra Pradesh re-organization Act (6 of 2014) in the year 2014, which received the assent of the President on 1st of March, 2014. The said Act came into force w.e.f 2<sup>nd</sup> of June, 2014 whereby the erstwhile State of Andhra Pradesh was bifurcated into two States namely the State of Andhra Pradesh and Telangana. The new State of Telangana was to comprise of the existing territory of State of Andhra Pradesh, namely Adilabad, Karim Nagar, Medak, Nizamabad, Warangal, Rangaraddi, Nalgonda, Mahbub Nagar, Khammam, and the revenue villages of Bhurgampadu, Seetharamanagaram and Kondreka in BhurgampaduMondal in Hyderabad district. Thereupon the said Territories cease to form part of the State of Andhra Pradesh. The State of Andhra Pradesh was to comprise of the territories of the existing State of Andhra Pradesh, other than those specified above, in Section 3 of the Act.

Under section 5 of Act, Hyderabad was to be common capital for such period not exceeding 10 years. After expiry of the period Hyderabad was to be the capital the State of Telangana and there was to be a new capital created for the State of Andhra Pradesh.

**62.** Hyderabad the capital of the erstwhile State of Andhra Pradesh had been developed with funds, resources, efforts made with large contributions from Andhra and Royalseema region. The majority of the industries, institutions etc. of the erstwhile State of Andhra Pradesh are located in an around Hyderabad. On account of population ratio, the new State of Andhra Pradesh has inherited 58 per cent debt of the erstwhile State as against 42 per cent by the State of Telangana (Section 54 of the Act of 2014). A substantial part of this amount had been incurred for developing Hyderabad. As Hyderabad was to be a common capital over a period of not exceeding 10 years, the State of Andhra Pradesh was compelled to identify a suitable location for building its capital at the earliest. Though, Hyderabad was made a common capital for both the States, it is not a Union Territory and is part of the State Telangana. Therefore, the State of Telangana alone exercises all the executive and legislative powers over Hyderabad, as a result of which the State of Andhra Pradesh does not exercises any powers over it nor does it get any share from the revenue generated. Soon after the bifurcation of States, the State of Telangana became the second State, after the State of Gujarat, to become a revenue surplus State, whereas the new State of Andhra Pradesh became revenue Deficit State with huge debts.

In the result, Government of Andhra Pradesh is facing an enormous difficulties and practical problems in day to day administration of the newly formed State from Hyderabad. Moreover, the State of Andhra Pradesh is losing thousands of crores of rupees in revenue since the entire State machinery is located in Hyderabad. In fact those persons who are working for Government of Andhra Pradesh are facing hostile environment there which is adversely affecting the work of the Government.

**63.** As per Section 6 of the Act of 2014, Central Government was to constitute an expert Committee to study various alternatives regarding the new capital for Successor State of Andhra Pradesh and make recommendations in a period not exceeding six months from the date of enactment of the re-organization Act. On 28th March, 2014 the Central Government had appointed an Expert Committee under the Chairmanship of Shri K.C. Sivaramkrishnan to conduct studies and make recommendations as to the location of the new capital of State of Andhra Pradesh. The Committee was to submit its report by 31st of August, 2014 which reduced the time to less than five months. The Committee could not visit the territories of State of Andhra Pradesh due to elections at National and State level which were held between 7th and 30th of April, 2014. The Committee could only visit some part of the State after the election results were declared and

the new Government was formed on 8th of June, 2014, since the State Administration was occupied with the elections.

**64.** The Committee, on the review of the experiences of some other capital city development projects in India and abroad, identified the criteria that were to be used to decide on particular location. The criteria adopted by the Committee, in order of significance, are as under

- (i) Availability of water
- (ii) Connectivity
- (iii) Favourable climate
- (iv) Proximity to existing large urban Centre capital  
Land availability, suitability and cost an ease of construction
- (v) Cost of ease of construction
- (vi) Topography
- (vii) Centrality
- (viii) Defence and security concern
- (ix) Historical significance

(pages 118-119 of report of the expert Committee)

**65.** The State of Andhra Pradesh consists of 13 districts, out of which 9 districts are coastal districts and remaining four are drought prone, with Anantpur district as second driest district in India after Jaisalmer-Thar desert, in Rajasthan. Further, the eastern ghat run through the coastal districts. North eastern districts consist of large forest inhabited by tribals. These areas are Naxalite affected. The maps of erstwhile State and newly formed State of Andhra Pradesh, along with capital city Amravati are Annexure R/3 and R/4 respectively. The coastal area of the State is prone to cyclone. These areas are frequently

affected by cyclones. The last was cyclone Hudhud in October, 2014 and cyclone Vardah in December, 2016. It was the cyclone Hudhud which caused unprecedented damage, especially to the city of Vishakhapatnam which was estimated to be 22,000 crores.

**66.** Greater Vishakhapatnam was also one of the four zones considered by the Committee as the possible location for the capital city which consists of city of Vishakhapatnam and its surrounding areas. The city of Vishakhapatnam is located at the foot hills of Eastern Ghats, adjoining the Bay of Bengal. About 40 per cent of the district consists of forest area and a large tribal population inhabit this area. Vishakhapatnam is also the Headquarter of Eastern Naval Command. The Committee had also considered Nellore as one of the probable places for the location of the capital. The city of Nellore is located on South East end of the State and bordering the State of Tamilnadu. Nellore has a vast coast line and is also prone to cyclone. Pulicat is second largest brackish water lake in the country and a bird sanctuary is also located at Nellore. Sriharikota, Space launching station used by ISRO, is also located at Nallore which poses a limitation on development of the area or the possible capital city. The Committee had also considered TrupatiKalahasti area which is located in the southern edge of the State. This location also did not fare well on the capital zone suitability index. It had scored

negative marks in connectivity and water and ranked eleventh and ninth out of the thirteen districts in newly formed State. This area also consists of a National Park and a wildlife sanctuary.

**67.** The Committee had decided to use to five screening criteria to examine the potential of various districts as capital zones, namely, water, risk, connectivity, land and regional development. On the basis of the said multi-dimensional suitability index, the Committee observed that four broad clusters, locations emerge from this analysis;

- (i) Vijaywada, denture
- (ii) Greater Vishakhapatnam
- (iii) Nellore
- (iv) Tripalli – Kalahasti in Royalseema

(page. 122 of the report)

**68.** The Committee submitted its report on 28th of July, 2014 wherein it had been clearly stated that the decision regarding the location of the capital city is the prerogative of the Government of Andhra Pradesh. (Pg No. 5 of the report available) The Committee had, within the available time, apart from largely relying upon the secondary data like reports and studies had also invited opinion from the general public. It is said that out of 4728 responses received by the Committee, the majority of the people voted in favour of Vijaywada-Guntur area (1156), with Vijaywada coming as second with (663) in Guntur third (372).

**69.** In cases of State suitability index the Committee had ranked Vijaywada Urban Area and Guntur Urban area as first and second respectively in Connectivity, first and third respectively in Regional Development and second and third respectively in Water resources  
(pages 170-173 of the report.)

**70.** The State Government, after consultation with experts of urban development, public organization and considering various aspects of public welfare, finance, accessibility environment etc. identified the present location with Amravati as the capital city area. The capital city area was notified under section 3 (3) of the said Act.

Andhra Pradesh Capital Region Development Authority Act, 2014 (Act No. 11 of 2014) was enacted on 30th December, 2014 by the State legislature with the following objects;

*“Thus, there is an absolute need to establish a new capital, to develop the capital region for the State of Andhra Pradesh in a planned manner, to ensure comprehensive development of area and for locating the capital for the State, it is decided to establish the Andhra Pradesh Capital Region Development Authority (APCRDA) for the capital region by undertaking specific legislating for giving statutory back up”.*

The Andhra Pradesh capital Region Development Authority (APCRDA) had been constituted under the Act for the purpose of Planning, co-ordination, execution,



supervision, financing, funding and for promoting and securing the planned development of the capital city area and the capital region.

The capital city area is located on the border of Guntur and Krishna districts which is spread over 217.23 square Kms and consists of 24 revenue villages and part of Tadepalli Municipality falling in Guntur district, covering ThulluruManglagiri and TadepalliMandals. The Capital city derives the name from the ancient city of 'Amravati', which was named after the deity of Amreswara temple built by Chalukya dynasty in 7th Century. This place has a history of more than 2,000 years and had served as a capital Satavahanas, Ikshavakulu, Palavas, Salankayulu etc. This place was a permanent Bhudhist centre and houses one of the largest Stupas, namely; the Mahachaitanya.

**71.** The capital city area is centrally located and is well connected with the other parts of new State of Andhra Pradesh. The area has the advantage of the urban area of Vijiyawada and Guntur which is the highest in respect of water resources, connectivity and overall regional development. On the recommendation of the committee the State Government had decided not to locate the capital in either of the aforesaid urban areas so as to avoid the drawbacks of these urban areas. The cities/ towns of Vijiyawada, Guntur, Tenali and Mangalageri were kept outside capital city area since they are already congested.

Moreover this capital city area is well connected with different parts of the States and the country. In so far as Railway is concerned, Vijiyawada Railway Station is one of the busiest junctions of the Indian Railways which was established in the year 1888 and is a Divisional Headquarters of South Central Railway Zone. It is situated on main railway lines such as Hawrah-Chennai and New Delhi-Chennai.

**72.** Similarly, the proposed Capital City is well connected by road. Two major National Highways pass through this region and are further interlinked with other National Highways, which makes the area well connected with the rest of the country. The national highway between Kolkata-Chennai (NH-16) which is also a part of the golden quadrilateral and highway from Pune-Machlipatnam (NH-65). Because of its location the area is well connected with the entire State through a network of roads which includes State highways and other major roads. As regards the connectivity of the capital city area by air, Gannavaram Airport is located nearby and would cater the immediate and further needs of the capital city. In the said airport a new terminal has been added recently, to cater to the increased demand.

Kakinada Port is about 200 Kms from this area. The proposed port of Machilipatnam is around 70 Kms. This would provide connectivity to different parts of the

world, which would facilitate trade as well as ease of construction of the capital city. Furthermore, four national inland waterways have been sanctioned which will run from Kakinada to Puducherry. The waterway consists of existing network of irrigation cum navigation canals. It would also link Kakinada and Machlipatnam Port with Chennai and Ennore Ports in Tamil Nadu. This waterways also consist of Buckingham Canal which starts from the city of Amravati and goes beyond Chennai. It was constructed by the British in the 18<sup>th</sup> century for navigation.

All these facilities are for the development of a capital city of the State and are essentially required for effective governance. The availability of such facilities would not only ensure that there is no additional economic burden on the State due to construction of such facilities afresh but it also helps in minimizing the impact on environment.

**73.** The city of Amravati consists of 24 revenue villages and a part of Tadepalli municipality with a combined population of one lakh. There are around 27000 houses, 84 primary schools, 11 primary health centres and many commercial establishments. It also has wide network of roads and bus stops. The railway line passes through it with Tadepalli as its station.

**74.** The new State of Andhra Pradesh, is facing great difficulty since majority of its administrative setup is

situated outside the State i.e. in the city of Hyderabad, where it has no jurisdiction. It is difficult to administer state from a distance and that too without any control over the said territory. Therefore, many problems for the State and its people have come up including for constructing the capital city, apart from being subject to heavy revenue losses. In such a situation the administrative setup of the state needs to be shifted from Hyderabad without delay. Therefore, infrastructure such as office space, residential accommodation schools, colleges, hospitals and hotels, airports, railway station, roads, etc. are required to be made available to all those who would have to be relocated to the capital city from Hyderabad. Proximity of the capital city to Vijaywada, Guntur, TimaliMangal that these cities will help in observing the initial surge in demand for the infrastructure and give adequate time for the State to develop the capital city after taking all round precautions and securing better administration for the newly formed State.

**75.** Looking to the nature of project that is to be brought up for capital city of the State, the development plan is divided into three phases. First phase would be between 2015-2025, second 2026-2035 and third phase 2036-2050. These plans have been put in place so as to ensure that the growth in the capital city is organic and gradual in order to ensure sustainable development.

## **Flood Plains:**

**76.** The applicants have sought to contend that the capital city is prone to flooding from river Krishna, on the basis of certain material placed on record in O.A. No. 171 of 2015 as contained in annexure A-9 and A-13; annexure A-19 in the rejoinder and annexure A-3 in the additional submissions. It has been submitted by the respondents that the areas mentioned in these documents do not fall within the proposed capital city boundary. The reference to Guntur, in this document, is with regard to the district as a whole and not any particular area falling within the proposed capital city, therefore, reliance on such documents would not be proper. The respondents have in fact placed documents on record which speak to the contrary and establishes no flooding during the unprecedented floods of 1853 nor in the floods of 2009.

**77.** As there is no flooding from river Krishna in capital city area due to existence of embankments/bunds, hence the proposed capital city cannot be said to be located within flood plains. According to the applicants, as mentioned in ground L of the original Application, flood plains are those lands which are “Subject to recurring floods”, as there is no flooding in the proposed capital city area because of river Krishna it cannot be accepted that the flood plains extend to proposed capital city area.

**78.** The EIA report, in Chapter 5.6 under the heading of the description of environment, the topics of hydrogeology, hydrogeomorphology have been discussed. It is clear from EIA report itself that the Map (Figure 5-15) has been prepared on 1:50000 scale and the classification in the tables provided there in, have been taken from Central Ground Water Board Report based on the maps prepared by the National Remote Sensing Centre in collaboration with other stakeholders department for the purpose of Rajiv Gandhi Drinking Water Mission Programme. Geomorphology is the study of the characteristic, origin and development of land forms that is the effect of air, water glacier etc. on the surface of the earth. Basically it deals with the change in the surface of the earth over millions of years.

Hydrogeomorphology is an interdisciplinary science which focuses on interaction and linkage of Hydrologic process with landforms or earth materials and the interaction of geomorphic process with surface and sub-surface water in temporal and spatial dimensions. The said map only depicts the nature of the surface and sub-surface of the earth in the said area due to the various processes and interaction of the elements. In Geomorphology and Hydrogeomorphology even ten thousand years is considered as recent history. The words flood plains used in the said map and Table 5 and 7 of the EIA report have been used as

geomorphological term only to signify the nature of the surface and sub-surface deposits which are present due to interaction of the elements with the surface and sub-surface in that area over millions of years. But it cannot be taken to mean that the said area consists of active flood plains.

**79.** The fact that the word flood plain used in EIA Report is with reference to geomorphological unit and not with reference to one in hundred (1 in 100) year flood line has been further clarified by Dr. Dasika Durga Prasada Rao who served as the Director of the Indian Space Research Organisation/ National Remote Sensing Centre. Hydrogeomorphologic mapping for the entire country under the Rajiv Gandhi Drinking Water Technology Mission was taken up under his supervision. Dr.Rao has clarified, in the e mails dated 19<sup>th</sup> of July 2016 and 1<sup>st</sup> August 2016 to the answering respondent which has been filed along with the written submissions Note 2 annexure R-8, that the area delineated as flood plain in the map (Figure 5-15 of the EIA Report) is genetically referred to as flood plain in geomorphological terms and that is not an active flood plain. This substantiates the finding of the expert committee which undertook the re-demarcation of one in hundred years flood line, pursuant to the directions of the Tribunal.

Therefore, any construction activity in this area will not lead to any adverse effect on the hydro geomorphological character of this area. It is stipulated in the environmental clearance issued to the capital city that all construction in this area would have well known engineering interventions and would have accompanying water harvesting measures that contribute to the ground water recharge (para 3-10 @ 1093-1099 of the counter affidavit filed by the respondent on 04.08.2016). The applicants themselves, in para 18 @ page 21-22 in O.A. No. 171 of 2015, admits that International 100 years return flood line has been accepted to form an integral part of a river's ecological system. Planners use these flood lines for developmental planning in flood prone areas.

**80.** According to the respondents the Irrigation Department would not only monitor the flows but also keep a record of the flows of the river. The flood recording is relayed on the ground and Maximum Flood Levels (MFL) is demarcated. The flooding levels of 1903 and 2009, according to the respondent, are marked on the ground and could be verified at any time. However, as the applicants disputed the demarcation of the flood plains, on the suggestion of the Tribunal, the respondent constituted a committee for demarcation of the flood plain, of Dr. V.V. Srinivas (Prof. of Hydrology Institute of Science, Bangalore), K. Ravi (River Conservator, Krishna Central Division) and



D. KasivisweswaraRao (Chief Engineer and Group Director, APCRDA, which submitted its report on demarcation of maximum flood level and flood plains of Krishna river near the city of Amravati, in June 2016 before the Tribunal (Pg. 1041-1082 in O.A. No. 171 of 2015)

The committee identified the demarcation already made after 2009 floods. It had taken into consideration the figures relating to floods recorded at CWC Stations and has done a modelling and estimation based on those figures. Accordingly, the committee had observed that 2009 floods were contained within the bund along the capital city. There is a buffer of 100-300 mtrs between the river margin and the bund all along the Capital city. This buffer is there both upstream and downstream of the Parkasam Barrage and in certain places it is even more than 500 mtrs. This buffer zone which is outside the bund also consists of private lands, houses, religious places, etc.

The committee has also conducted flood frequency analysis and concluded: "Hence, the flood plain which is demarcated/delineated for the 2009 year event can be declared as that corresponding to the flood event, which is likely to occur once in atleast (i) 104 years based on 1901-2012 data and (ii) 124 years based on 1965-2012 data." (Pg. 1065-1066 in O.A. 171 of 2015). Therefore, it is evident that the flood from river Krishna does not cross the

embankment/bund. Consequently, the areas beyond embankment/bund cannot be called as flood plains.

**81.** In order to appreciate the submissions made by the counsel for the applicant that flood plains of river Krishna extend to the proposed capital city area, it is to be considered whether there is regular flooding from river Krishna in the capital city area. There is no dispute about the fact that there exists embankments/bunds near the area of the capital city which prevents the flooding. On perusal of the documents placed on record by both the parties, prima facie, it does not appear that the capital city is prone to flooding from river Krishna. Even during the unprecedented floods in 1853 and thereafter in 2009, there was no flooding in the capital city area so as to establish that it lies in flood plains. An area to be flood plain has to be subjected to recurring floods, as stated by the applicant himself in the Original Application. Any occasional flood in an area cannot be termed as an area having flood plains. There has to be a continuous flow of water by which a flood plain can be demarcated.

It is also clear from EIA Report that the capital city area does not fall in a flood plain and the reasons for the same has been discussed at length therein. As a matter of fact the report clearly explains about the use of flood plain in terms of hydrology and hydromorphology which basically deals with change in surface of the earth. The maps which

have been referred to in the report are based on maps prepared by National Remote Sensing Center. Geomorphological signifies the term and nature of the surface and sub-surface deposit which are due to interaction of the elements in the area for long period of years. But this does not mean that the said area consists of active flood plains. This aspect has been further clarified by the Director of Indian Space Research Organization/National Remote Sensing Center vide his email dated 19.07.2016 that the area delineated as flood plain in the map is genetically referred in geomorphological terms and not active flood plains. Moreover when the applicants disputed the demarcation of the flood plains the respondents, on the suggestion of the Tribunal, had constituted a committee of Dr. V.V Srinivas and others as referred above. The Committee submitted its report in June, 2016 on demarcation of maximum flood level and flood plain of river Krishna near city of Amravati. The committee identified the demarcation already made after 2009 floods and observed that the said floods contained within the bund along the capital city. The Committee had also conducted flood frequency analysis and came to the conclusion that the flood plain demarcated for the year 2009 event can be declared as that corresponding to the flood event, which is likely to occur once in at least 104 years based on 1901-2012 data. Therefore, we have no

hesitation in holding that as flood from river Krishna does not cross the embankment, there is no flood plain beyond it. Consequently, the contentions raised by the applicants that the flood plains of river Krishna are extended to the capital city needs to be rejected.

### **High Flood Discharge:**

**82.** It has also been argued by learned counsel for applicant/appellants that there had been high flood discharge recorded in the capital area during earlier years. It is said that recently the flood discharge of this area exceeded all records in October, 2009. The counsel for respondent has emphatically denied these facts.

**83.** The earliest account of existence of bunds in this area is given in the book titled *Engineering Works of Kistna Delta, a descriptive and historical account*” compiled for the Madras Government by George T. Walch, M. INST. C.E., Chief Engineer for Irrigation, Madras (Retired), Volume-I, published in 1899. This book refers to the existence of embankments both below and above Vijaywada (*Bezawada*) in July of 1853. The relevant extract is as follows:

“5. All the embankments of the river and the channels, throughout both districts, being topped and breached, the whole Delta is laid under several feet of water, and the inhabitants of numerous villages are driven to take refuge on the roofs of their houses, and

*on trees, where they have been obliged to remain for several days. I fear enormous damage has been caused to the public works, and that the people are suffering severe privations and losses, particularly of cattle.*

*Out of this trial, such works as had already been constructed came scatheless, but it was clear that the Committee had been mistaken in supposing that a very slight amount of embanking above Bezwada would suffice to keep the river in floods from there overflowing its margin and sweeping over the detaic lands. On the right side of the river, it is true, only a mile of embankment in many parts of considerable height and section, had to be constructed for about 8 miles to Ibrahampatam, to prevent river floods from sweeping down the valley of the Budameru; when they have done this even to a comparatively small extent, through breaches in the embankment, they have caused great damage to the Ellore canal and to the lands and works in the Gudivadataluk.*

*The original cost of these embankments is not known. After the flood of August 1896 estimates were sanctioned of Rs. 12,200 and Rs. 63, 200 for their repair and strengthening, the former sum being for the right and the latter for the left embankment (see P.M.G. No. 1015 I, dated 13th November, 1897)."*

The floods that occurred in 1853 were historic floods but even the said flood did not affect the areas where the Amravati Capital City is proposed to be located, which can be gathered from the aforesaid excerpts from the said book, that *"On the right side of the river, it is true, only a mile of embankment, to the Undavilly hill, proved*

*sufficient...".* As stated above, the Capital City is located on the upstream of the Prakasam Barrage on the right side of the river. Undavalli hill (Undavilly hill) is also located in the same area where the Capital City is proposed. Thus, the area where the Capital City is located was not flooded even during the unprecedented floods of 1853.

**84.** The applicants have placed on record certain materials in O.A NO. 171 of 2015, [*especially Annexure A-9 (Colly) and Annexure A-13 at Pages 67-74 and 104-107 respectively; Annexure A-19 in the Rejoinder to the reply filed by respondents no. 1&2 at pages 176-185; Annexure A-3 in the Additional Submissions on behalf of the Applicants at Pages 1016-1034*] based on which the applicants have sought to contend that the Capital City is prone to flooding from the River Krishna. These documents do not relate to areas which fall within the proposed Capital City boundary. Reliance upon such documents by the applicants is, therefore, wholly unjustified.

**85.** The respondents have put on record documents which clearly establish that the areas falling within the proposed Capital City were neither flooded during the unprecedented floods in the last 106 years. (*"Flood Contingency Plan of River Krishna for the Year 2012-2013 in Krishna and Guntur Districts"* filed as document at pg 138

to 209 in O.A No. 171 of 2015, and Report filed as document at pg 1041 to 1082)

**86.** The National Disaster Management Authority in 2008 had prepared guidelines for flood management titled as “National Management Guidelines-Management of Floods.” They were issued to assist the departments of the Government of India, State Government and other agencies with respect to developments and in preparing Flood Management Plans. In chapter 6 of the said guidelines titled “Regulation and Enforcement” provides flood plains zoning as under:

#### **“6.1.3 Regulation of Land Use in Flood Prone Areas**

*There can be different considerations for such regulations. For example, the area likely to be affected by floods up to a 10-year frequency should be kept reserved only for gardens, parks, playgrounds, etc. Residential or public buildings, or any commercial buildings, industries, and public utilities should be prohibited in this zone. **In area liable to flooding in a 25-year frequency flood, residential buildings could be permitted with certain stipulation of construction on stilts (columns), minimum plinth levels, prohibition for construction of basements and minimum levels of approach roads, etc. In urban areas there should be double storeyed buildings. Ground floors could be utilised for schools and other non-residential purposes.***

#### **6.1.4 Categorisation and Prioritisation of Structures in Flood Plains Zoning**

*In the regulation of land use in flood plains, **different types of buildings and utility services can be grouped under three priorities** from the point of view of the damage likely to occur and the flood plain in which they are to be located:*

**Priority 1:** Defence installations, industries, public utilities like hospitals, electricity installations, water supply, telephone exchanges, aerodromes, railway stations, commercial centres, etc.-Buildings should be located in such a fashion that they are **above the levels corresponding to a 100- year frequency or the maximum observed flood levels.** Similarly they should also be above the levels corresponding to a 50-year rainfall and the likely submersion due to drainage congestion.

**Priority 2:** Public institutions, government offices, universities, public libraries and residential areas.-Buildings should be **above a level corresponding to a 25-year flood or a 10-year rainfall** with stipulation that all buildings in vulnerable zones should be constructed on **columns or stilts** as indicated above.

**Priority 3:** Parks and playground. –Infrastructure such as playgrounds and parks can be located in areas vulnerable to frequent floods. Since every city needs some open areas and gardens, by restricting building activity in a vulnerable area, it will be possible to develop parks and play grounds, which would provide a proper environment for the growth of the city.”

(filed as Annexure R7 in Note-2 of the written submissions.)

The aforesaid guidelines clearly establishes that construction can be undertaken in areas which get flooded even by floods of 25 to 100 years frequency. In the present case the 100 year flood line has been re-demarcated and it is clear that Amravati Capital City is protected by embankment and that the floods in the year 2009 which was of 100 years frequency, was contained within the bund. There was no flooding in the area falling within the proposed Capital City.

(Para 11 at pg. 1099 -1110 of the counter affidavit filed by respondent on 4<sup>th</sup> August 2016).



## **Dams:**

**87.** Another contention raised by the applicants is that since there are number of dams on the upstream of Parakasam Barrage on river Krishna, the proposed city should not be located in the area as in the unfortunate events of dams breaking, these areas would be adversely affected. The contention is speculative. Admittedly, all dams are constructed as per the guidelines of Central Water Commission, and after obtaining all the statutory clearance. A Dam breaking analysis is an integral part of such clearance and they are constructed to withstand of kinds all extreme events, conforming to the prescribed IS Codes. All the dams are put on constant checks and are operated and monitored as per the guidelines. Despite the capital city being located in a safe zone, with abundant caution and taking into consideration an extreme and unlikely scenario of a dam breaking upstream of river Krishna, a level of +25 meters has been arrived at for the critical establishments. It is reflected in EIA report as well, but the applicant has misconstrued the same. The critical infrastructure includes command and control area, hospital, police station and important government and other establishments including the main access road. This level has been proposed for the purpose of evacuation, safe shelter, ensuring continuity of essential services and safety of the key installations. In case they are to be established

in areas below this level, they are proposed to be constructed on raised platforms i.e. on pillar and stilts. The applicants' contention that the level of the entire capital city area will be raised is incorrect and based on wrong understanding of the concepts.

The principle of sustainable development has been adhered to by incorporating certain unique features in the master plan. Based on the study of 1 in 1000 years probable flood, the drainage network including the canals have been designed to take care of such scenario. They are designed to take water to the designated area, such as stadiums, park, right of way of corridors and to prevent inundation of key installations, residential and commercial areas.

**Kondaveeti Vaghu:**

**88.** Now we come to the next question raised by the applicant in respect of KondaveetiVaghu. It would be relevant to mention here that the applicant had not mentioned about KondaveetiVaghu in the original application. It was only in the counter affidavit filed by respondent on 10.08.2015 that the subject in respect of KondaveetiVaghu had come before the Tribunal.

KondaveetiVaghu is a seasonal stream which is dry for most part of the year. It temporarily inundates for few days in a year. However, it is not a natural phenomena and it had not occurred before 30 years. There had been no

inundation in the area due to KondaveetiVaghu after 2014. The rejoinder filed by the applicants also contains a newspaper report dated 18.03.2015 (Annexure 17 at pg no. 174) wherein it is clearly stated that the problem continues to persist for 25 to 30 years. The Government is said to have made plans to address the issue.

In the counter affidavit filed on 18.08.2015, it has been submitted that topographical and hydrographical surveys have been completed and all the measures are being finalized for employment in consultation with the expert committees constituted by the Government to address the said issue, in such a way that not only this temporary inundation is prevented but excess water is stored and utilized to meet the needs of the capital city. (Para 22 at pg no. 123-124). Such inundation are said to be entirely manmade. The manmade intervention, such as:

- i. Extensive encroachments and siltation along the course of Vaghu.
- ii. Flattening of the banks of the Vaghu.
- iii. Congestion at the sharp bends due to soil erosion and encroachments.
- iv. Construction of Prakasam Barrage in 1950s
- v. Increase in height of Prakasam Barrage and maintenance of minimum pond level
- vi. Guntur channel.

**89.** KondaveetiVaghu, from its origin to the point it joins river Krishna, flows in the criss-cross manner. There had been large scale encroachments throughout the length

of this seasonal stream. People have even encroached on its bed, altered its natural course, have flattened or brought it to the level of adjoining lands and have been undertaking agricultural activities. Besides, there has been weeding and siltation at many places, which have resulted in obstructions to the natural flow of water in KondaveetiVaghu. It is due to encroachments and change in its natural course, which at some places is up to 90° turns, that the water gets stagnated resulting in further problems. The irrigation department had made many attempts to rectify the same but it could not undertake the works fully because of resistance from the land owners. However, as the lands are now in possession of the State, the work to restore the natural course and to desilt the bed have been undertaken.

The bed level of KondaveetiVaghu is +13.5 mtrs which is same as that of river Krishna at the confluence point. Therefore, there is no obstruction to the flow of water from KondaveetiVaghu to river Krishna. But when the Prakasam Barrage was constructed along with higher bunds, a system of gate was introduced, namely; Undavalli Regulator so that the water from Vaghu can be allowed to flow into the river and simultaneously the water from river Krishna could be prevented from entering to areas beyond the bunds.

Such a system continued for a long time till the capacity of the barrage had to be increased to meet irrigation and other requirements. A minimum level of water had to be maintained in order to meet the requirements of NarlaThathaRao Thermal Power Station. In the result, the earlier system which was used to empty the water of Vaghu into Krishna river was no longer effective. It was this reason, along with others, which led to temporary inundation in certain areas along the course of KondaveetiVaghu during heavy monsoon for a few days in a year.

**90.** The Guntur channel was constructed in the year 1970 to provide drinking water to Guntur city from river Krishna at Prakasam Barrage. The channel draws water through the Out fall Sluice of KondaveetiVaghu in the reverse direction. For supplying water to Guntur channel, water is allowed into Vaghu by lifting its out-fall regulator. The water is allowed towards FSL to Guntur channel i.e +17.02 mtrs and thereafter it is supplied into Guntur channel. So as to reach +17.02 mtrs at the intake point of Guntur Channel, the water flows up to 12 kms in the reverse directions in the KondaveetiVaghu. During very heavy rains, due to the fact that water is already present at intake point, KondaveetiVaghu over flows at all saddle reaches. Now it is proposed to separate Guntur channel from KondaveetiVaghu.

**91.** As the temporary inundation is a seasonal phenomena, the respondents have proposed several ameliorative measures being adopted to address the issues. As for instance, it has proposed to construct detention point/reservoir to store water and utilize the same for meeting the requirement of the proposed capital city. Such a proposal is part of the notified Master Plan as well as EIA Report which has been considered by SEAC and SEAAC. One reservoir/pond is proposed to be constructed outside the capital city to store the water received by KondaveetiVaghu from its catchment area. The excess water, if any, will be carried through capital city or which would also be stored in ponds. The unutilized water store in these detention ponds which flows into the sea, will be used for meeting the water requirement of capital city. Apart from it, pumping facility is planned, for any excessive water, into river Krishna and the work for the same have started.

It has been submitted by the counsel for respondent that all the encroachments will be removed so as to restore the natural course of Vaghu. Desiltation is proposed to remove the congestion in the vaghu. The VaghuPorambok lands adjoining the banks of vaghu which has withered due to encroachments, will be restored and proper green buffer along with the Vaghu will be established.

**92.** From the aforesaid facts it is clear that KondaveetiVaghu is a seasonal stream and remains dry during larger period of the year. Therefore, it inundates only for few days. Last inundation in the area was in the year 2014. The State Government has constituted a committee to address the issue for preventing even this temporary inundation and the excess water is to be stored and utilized to meet the needs of the capital city. The inundation is manmade in various ways, as mentioned herein above. However, in view of the bed level of KondaveetiVaghu at the confluence point that there is no obstruction in its flow to river Krishna. Only during heavy rains the water of KondaveetiVaghu over flows. There is a proposal to separate Guntur channel from KondaveetiVaghu because at times the water used to over flow from KondaveetiVaghu at the intake point of the Guntur channel. The respondents are taking further steps to construct detention pond/reservoir to store water for meeting the requirement of the capital city and this has been made as a part of the Master Plan NIA report.

The respondents have submitted that all encroachments are going to be removed to restore the natural course of KondaveetiVaghu and desiltation would be done to make it free from congestion. The green buffer along with the vaghu is proposed to be established. In these circumstances when appropriate steps are being

taken in respect of temporary inundation by the seasonal stream of KondaveetiVaghu and its water is to be stored and utilized for the need of the capital city, it cannot be said that the Vaghu can be an obstruction in coming up of the capital in the said area and that the city of Amravati should be shifted to other place.

**Wetlands and water bodies:**

**93.** Another question raised by the applicant is with regard to the wetlands. It is submitted by the applicant that the wetlands in the area needs to be protected. It may be noted that a report titled as “Nation Wetlands Atlas: Andhra Pradesh” was prepared and published in March, 2011 by Space Application Center, ISRO which was sponsored by Ministry of Environment, Forest and Climate Change, under the project “National Wetland Inventory and Assessment”. The said report identifies all the wetlands in the erstwhile State of Andhra Pradesh, district wise and broadly categorized as Inland and Coast Land Wetlands. The capital city is located in Guntur district which is 60 to 78 kms away from the coast and as such it does not come under the coastal region. The geographical area of the district is 11391 sq. kms, out of which wetland constitute 5.94% of the area. This includes inland wetland, coastal wetlands and wetlands, which are mainly tanks. The district comprises of 1408 wetlands out of which 639 have been mapped. Besides, there are 769 small wetlands.



There is only one natural wetland (water logged) excluding the rivers and the streams, which is not within the capital city area.

**94.** As in other places, the State of Andhra Pradesh has a large number of water bodies, streams, vaghus and rivers. In a capital city such areas would definitely consist of these natural features, as can be seen from the map of erstwhile State of Andhra Pradesh showing the location of the water bodies which are 81 Basins and Sub Basin. It can also be seen from the said map that the capital city area consist of lessor number of water bodies. In such a situation the object is to protect and preserve these natural resources by taking them into consideration while planning for development and integrating them into the Master Plan. Such a step would be in furtherance of the principle of Sustainable Development.

**95.** The water bodies in the capital city, excluding the river and streams Vaghu covers an area of 616 acres. It is submitted by the respondents that it is proposed in the Master Plan to create new water bodies which will increase the extent of water bodies by 1215 acres. Consequently the total area of water bodies in the capital city would be 1813 acres, which is an increase of 50.70%. After including vaghus and canals the overall increase in water bodies would be 197.24%. It has also been submitted that KondaveetiVaghus natural course would be restored and

the existing width of 6 to 30 mtrs is going to be increased to 30 to 90 mtrs, with a green buffer zone of 30 mts on either sides. Thus the total area would be 336 acres and 627 acres including green buffer. The width of Palavaghu which is 2 to 6 mtrs will be increased to 45 mtrs with a green buffer zone of 30 mtrs on either side. This would result in a total area of 186 acre and 433 acres including green buffer.

Five new canals are proposed to be constructed which will cover further area of 1410 acres including green buffer. The concerned departments such as irrigation, planning and CRDA are evaluating the technical options for best utilization of KondaveetiVaghu and Palavaghu in the capital city, in sustainable manner. The options are optimized on the basis of ground conditions before implementing the works. The respondents submit that separate system of storm water drain has been planned so as to avoid mixing it with waste water. The storm water drains are going to be integrated, on the basis of topography, with all the water bodies in the city which would help in maintaining them and also in ground water recharge. All the water bodies in the city will be having a green buffer zone.

### **The Committee:**

- 96.** The Sivarama Krishnan Committee has in its report clearly mentioned that the decision regarding location of

the capital city is the prerogative of Government of Andhra Pradesh It observed that:

*“3. The Committee recognizes decisions regarding the capital city or location of various capital functions is a prerogative of the A.P Government in consultation with the Central Government and such others as considered appropriate.”*

(Pg no. 5 of the report of Expert Committee)

The Committee has not given any specific recommendation as to the location of the capital city which is clear from perusal of part VI of the report titled “Summary and Conclusion”. The Committee has only identified “Potential Capital Zone Location” based on District and Capital Zone Suitability Index, wherein Vijyawada-Guntur region has come out to be the best among other zones.

Perusal of the Committee’s Report as a whole is required to be made so as to appreciate and note the contents of it. Mentioning of a part of the report would certainly not suffice. The respondents have specifically replied in this regard in para 32 of their counter affidavit. Further, the report is to be considered along with the maps which have been placed with it. Consideration of both the things gives a clear and proper picture (Para 12-18 and 32 at pg no. 116-121 and pg no. 128-129 respectively of the counter affidavit filed by respondent on 10.08.2015).

**Land Pooling:**

**97.** We now propose to take up the issue of land pooling scheme for procuring land for the capital city. We have heard both the sides at length on this issue. It has been said that Amravati capital city area is 217.23 sq. kms which is approximately 57350 acres. Till now, the farmers have volunteered to contribute approximately 34000 acres of land for setting up the new capital city. These lands have been notified under the land pooling scheme, as a result of which the owners of the land will be given developed residential and commercial plots, besides other benefits, in lieu of the undeveloped land surrendered by them. For every one acre of land, in accordance to its nature, 1000 sq. yards of Residential plots and 250-450 sq. yards of Commercial plots will be given to the land owners. For the loss of crops an annuity of Rs. 30,000 to 50,000 per acre with 10% annual increase is being given for 10 years. For the first year (2015-16) an amount of Rs. 128.92 crores have been paid as annuity and Rs. 141 crores have been released for the second year. Additionally, one-time payment of Rs. 100000 per acre for gardens having lime/sapota/guava/amlam and jasmine plantation is being given.

**98.** There are other benefits which are being given to the people who have surrendered their land under the land pooling scheme, such as:

1. Central Government has extended tax benefits on the Capital Gains in the recent budget to the owners who have given their land under the scheme.
2. Land pooling ownership certificate with alienable rights, exempting registration fees.
3. One time agricultural loan waiver up to Rs. 1,50,000, per family of farmers who have surrendered the land under the scheme. Such benefit has been extended to 8135 farmers till now and an amount of Rs. 80.96 crores has been disbursed to them.
4. As the benefits in the land pooling scheme outweighs the benefit under LA, R&R Act, 2013 and therefore the owners of the land have voluntarily come forward in large numbers.

**99.** Besides, all the residents of capital city as on 08.12.2014 would receive the following benefits:

1. Rs. 2500 per month for a period of 10 years to all the landless families. In this respect an amount of Rs. 104 crores have been released by now.
2. NREGA up to 365 days a year, per family
3. Housing to the homeless as well as those losing houses during the course of development
4. Skill development training with stipend to cultivating tenants, agricultural labour and other needy persons for alternative livelihood. So far 5135 persons have been trained and 1009 persons have been given employment

5. Interest free loan up to 25 lakhs to all poor families, for self-employment.

6. Free education policy has been notified by the department concerned on 16.05.2016

7. Free health policy has been announced by the department of Health, Medical and Family Welfare on 12.05.2016

(Notification under land pooling scheme-annexure R-10)

**100.** Having given our thoughtful consideration to the question of land pooling scheme of farmers for the proposed capital city area of Amravati, we are of the considered view that the said scheme is neither arbitrary nor against the interest of the farmers. As informed by the respondents the farmers have volunteered to give their land for setting up of the new capital. Once these lands are notified in land pooling scheme, the farmers are given developed residential and commercial plots in lieu of the lands surrendered by them. Apart from it, the farmers are being given annuity for loss of crops which is to be given for 10 years, with an increase of 10% annually. So far an amount of Rs. 128.92 crores have been given in this regard and Rs. 141 crores have been released for the second year.

In addition to it one time payment of Rs. 1 lakh per acre is given for gardens and plantation of trees like lime, amla, etc. The other benefits given to the farmers in this regard is tax on capital gain, loan waiver, monthly amount

of Rs. 2500 to landless families for ten years, housing for homeless, interest free loans up to Rs. 25 lakhs, free education and health policy, etc, etc. It is pertinent to note here that the total amount of land which is already been volunteered by the farmers and the fact that the agricultural lands in the islands of Lanka have also been volunteered by the farmers, clearly shows that there is no coercive method adopted by the Government and the land pooling scheme is certainly beneficial to the farmers. Therefore, this contention of the applicant that land pooling scheme is arbitrary and the farmers are forced to surrender their land is not tenable.

**Rich Agriculture land:**

**101.** The applicants have further raised the question that as the capital city area has rich agricultural land the State Government should revisit the idea of selecting VGTM area for the capital. The nature of soil in the capital city area is predominantly black cotton soil. The predominant crops are cotton, horticulture and maize, with paddy being grown in negligible area in the capital city.

**102.** Detailed studies with regard to the agricultural activity and the productivity in the capital city area have been conducted as part of the EIA study and the same have been submitted to the SEAC and then SEIAA, as part of the EIA report for obtaining the Environmental Clearance. Chapter 5 of the EIA report titled "*Description*

*of the Environment*” details with the various aspects of the environment in the capital city area and details of studies/surveys as to the agricultural productivity of the project area. (Pg 175-179 of the EIA Report)

As per the EIA report, the total sown area for both Kharif and Rabi seasons (2014-15) was 17394 Ha of which 30.04% of the sown area was under cotton cultivation, 22.54% under the horticulture cultivation and 22.21% was under maize cultivation. From the above it is quite clear that the contention of the applicants that the construction of the capital city in this area will adversely impact the food security is totally misplaced.

**103.** Total sown area in the capital city area during *kharif* 2014 was 11,242 Ha of which 1,266 Ha was paddy, as against total sown area of 41,01,000 Ha in the State of Andhra Pradesh, of 16, 35, 000 Ha was paddy crop. This means that the total sown area in the Capital City area is 0.027% of the total sown area in the State of Andhra Pradesh, whereas with respect to paddy it is 0.077% (Para 26 @ Pg 125-126 of Counter Affidavit filed on 10.08.2015)

**104.** Once the Polavaram Project on the Godavari river is completed, the project is going to stabilize the aycut and provide irrigation water to more than seven lakhs twenty thousand acres of agricultural land. Apart from that, the water to be saved in the delta region of the river Krishna due to the construction of the Pattiseema Project will be



now utilized to provide irrigation and drinking water in the upstream drought prone regions of the State. Further, many other projects have been completed since 2014. The State of Andhra Pradesh is taking all the steps to complete Veligonda Project, HandriNivaSujalaSravanti and GaleruNagariSujalaSravanti at the earliest and bring more areas into cultivation.

All these projects which have been completed recently and those which are in their final stages are going to stabilize the aycut and is going to provide dependable source of water which will result in substantial increase in the agricultural productivity in the State and will have a huge positive impact on the lives of the farmers in the State. Apart from these efforts, the State will also take steps to bring in additional land under agriculture, which is an on-going and a continuous process.

**Lankas:**

**105.** One of the contentions raised by the applicant, through the rejoinder filed on 6<sup>th</sup> August, 2016, was with regard to the people who are residing in lankas and their lands. On account of change in the course of river Krishna, certain areas of main land had got segregated and took the shape of islands. These lands continued to be recognized as part of the revenue settlement of the respective villages, of which they formed an integral part

earlier. Some of the lankas remained connected/attached to the main land on either side of the river.

The lanka lands were, in erstwhile State of Andhra Pradesh categorized as A class (permanent), B class (semi-permanent) and C class (temporary). As per the policy of the government, A & B category lands could be given for cultivation to poorer section by granting D Form Patta. Some people had been issued pattadar passbooks, in recognition of D Form patta. There are patta lands, ceiling surplus lands, D form patta and the remaining are the government lands in these lankas. There are thirteen lankas within the revenue boundary of the Capital City area, out of which only two islands namely; Pedalanka of Rayapudi and Uddandarayani Palem Lanka are inhabited. There are 118 families and 456 people living in the scattered houses in Pedalanka and 68 families with 259 people living in clustered houses in Uddandarayani Palem Lanka. On these islands facilities like power and primary school, including places of worship are available. Another island namely; Bhabhavani which is one amongst the thirteen islands, has been developed for tourism and is a major tourist attraction in the area. The said islands consist of resorts and other recreational facilities. Apart from these three lankas, the remaining ten lankas are uninhabited, though some agricultural activities are being

carried therein. Some of these lankas are accessed by the people on motor vehicles, during most part of the year.

A large number of beneficiaries/patta holder/inhabitants of lanka have requested the government to after their lands under the land pooling scheme. Accordingly, the respondents vide LPS Rules framed under APCRDA Act, 2015, issued a notification on 05.12.2015 for pooling the lanka lands on voluntary basis. Verification of ownership and apportionment is under process. Under this scheme, families in lanka will be rehabilitated and given lands in the main land. The lanka land will be strengthened/streamlined, as per the requirement, under the direction of the River Conservator after duly obtaining necessary clearances. Only permitted uses will be taken up on these lands.

**106.** The question with regard to the islands of lankas raised by the applicant is broadly, two fold. Firstly, with regard to the people residing on those islands and, secondly, in respect of their agricultural lands. As seen earlier, out of thirteen lankas within the revenue boundary of capital city area only two islands i.e Pedalanka and UddandarayaniPalem Lanka are inhabited, wherein there are about 118 families and 68 families living, respectively. These islands are having the facilities of power, primary school, etc. Another island named as Bhabhawani consists of resorts and other recreational facilities. The

remaining ten lankas are uninhibited and only some agricultural activities are carried out therein.

A large number of inhabitants of lankas have themselves requested to opt for their land in the land pooling scheme for which a Notification has been issued on 05.12.2015. Under this scheme the residents of lankas will be rehabilitated and given land in the main land of the capital city. It has also been decided that the State Government would streamline the land of lankas under the direction of river conservator after due clearances and only limited use will be permitted on these lands. In other words, the State Government is taking appropriate steps with regard to the residents of the lankas and their land for which they are being given land under the land pooling scheme and steps would be taken for their rehabilitation. Thus the contention raised by the applicant is without any substance and is without any merit.

**EIA Notification:**

**107.** The Schedule appended to the Environment Impact Assessment Notification dated 14.09.2006 (hereinafter referred to as the “EIA Notification”) classifies the projects and activities broadly under two categories i.e. Category ‘A’ and Category ‘B’ projects based on their potential impacts. While projects and activities falling under Category ‘A’ require prior Environment Clearance from the Central Government, those falling under Category ‘B’ projects

require prior Environment Clearance from the State Environment Impact Assessment Authority (hereinafter referred to as the "SEIAA") based on the recommendation of the State Expert Appraisal Committee (hereinafter referred to as the "SEAC").

**108.** The projects and activities are further sub-classified in the said Schedule to the EIA Notification dated 14.09.2006, under various items and sub-items. The Amravati Capital City project falls under sub-item (b) of item 8 titled "*Township and Area Development projects*". All the projects falling within the parameters specified under the schedule and falling under 8(b) are categorized as Category 'B' projects.

**109.** The Amravati City is spread over an area of 217.23 Sq. K.m. and falls within the parameters specified in sub-item 8 (b) i.e. "*Townships and Area Development project*" and having the threshold limit of "*Covering an area of > 50 ha and or built up area > 1,50,000 sq. mtrs*". The project thus falls under Category 'B' projects as per the EIA Notification and a prior environment clearance was required to be obtained from the SEIAA.

**110.** As per the amendment to the EIA Notification dated 14.09.2006 by Notification No. SO 3252 (E) dated 22.12.2014, the General Conditions in the EIA Notification dated 14.09.2006 do not apply to both sub-items 8(a) and 8(b) under item 8 of the Schedule. The relevant extract of

the said amendment notification dated 22.12.2014 is as follows:

*“A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category ‘B1’ Project.*

*Note.- “General Conditions” shall not apply.”*

**111.** Since the conditions specified in the Schedule to the EIA Notification, as amended by Notification No. SO 3252 (E) dated 22.12.2014, provides that all projects falling under item 8 (b) “shall require an Environment Assessment report and be appraised as Category ‘B1’ Project”, the Capital City project required an Environment Impact Assessment Report (hereinafter referred to as the “EIA Report”) to be prepared and appraised as ‘B1’ project.

**112.** The EIA studies were conducted and an EIA Report was prepared as per the Standard Terms of Reference prepared and published by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as the “MoEF”) in April 2015 as mandated by Notification No. S.O. 996 (E) dated 10.04.2015.

**113.** Sub-para III of Para 7(i) of the EIA Notification mandates that public consultation should be carried out for certain category of projects and also provides exceptions to the same. Sub-clause Clause (d) of Clause (i) in sub-para III was added by an amendment to the EIA

Notification vide Notification being S.O. 3067 (E) dated 01.12.2009.

**114.** The Respondent and the State of Andhra Pradesh have involved the Public at large at every stage. Public consultations were held by the Sivarama Krishnan Committee during the process of preparing its report. Wide public consultations took place at all stages *inter alia* before deciding the location of the Capital City, preparation of the Concept Plan and at the stage of land pooling. The Respondent had put the draft master plan in the public domain and had invited objections. After taking into consideration the objections and suggestions, the Master Plan was prepared and notified. Land pooling layouts are being finalized in consultation with the landowners who have given their lands. Even during the EIA Study public consultations were held both in the project area and the study area.

**115.** The project has been appraised based on Form 1, Form 1A, Concept Plan and the EIA Report in compliance with the conditions of the EIA Notification. As per Para 3 of Appendix V to the EIA Notification, a project falling under sub-item 8(b) of the Schedule has to be appraised by the SEAC on the basis of Form 1, Form 1A, Conceptual Plan and the EIA report keeping in view its *“unique project cycle”*.

**116.** The EIA Report and the Environment Clearances pertaining to similar “Township and Area Development Projects” i.e. Projects falling under Item 8(b) of the Schedule appended to the EIA Notification such as Naya Raipur City in the State of Chhattisgarh and Gift City in the State of Gujarat were considered as guiding documents for preparing the EIA Report of the Amaravati Capital city. The SEAC and the SEIAA have also taken note of these two projects and their clearances while appraising the present project.

**117.** The Amaravati Capital City development project consists of development plans in three phases Phase-I (from 2015 to 2025), Phase-II (from 2026 to 2035) and Phase-III (from 2036 to 2050) and it extends up to 2050. Developments in the Capital City over the next thirty five (35) years in the three phases provide a “Unique Project Cycle”, as envisioned in EIA notification.

**118.** Keeping in view the fact that the Area Development Projects are unique due to their long project cycles, it has been provided that such projects can be appraised based on the Concept Plan. This has been provided keeping in view the fact that in case of projects like the present one, where a whole new city is being developed, all the details of the development cannot be finalized as the city will be developed in a planned manner based on the demand and necessity of the time. Further, the plan may undergo



revision over a period of thirty five (35) years based on the prevailing circumstances including economic, technological developments, education, employment opportunities, national and international policies, public demands i.e., the needs of the people of the city, the State and the country.

**119.** Keeping the abovementioned factors in mind a specific condition has been imposed in the environmental clearance, which is as follows:

*“Any change(s) in the scope of the project, shall require a fresh appraisal by the SEIAA. As the details of the Inter Linked Projects for the Government Complexes, Housing Complexes, Cultural Centres, Industries-IT Park, Commercial Complexes, Educational Institutions etc. have not been submitted with respect to built-up area, excavation, water consumption, sewage generation, solid wastes generation, power requirement, pollution control arrangements, environmental safeguards, construction material etc. for construction and operation phases, the respective project proponents shall obtain separate Environmental Clearances for all the projects which falls under the schedule of Environment Impact Assessment Notification, 2006 from State Level Environmental Impact Assessment Authority, as per provisions of Environment Impact Assessment Notification 2006.”*

**120.** The Answering Respondent i.e. the Project Proponent plans to develop the project area i.e. the Capital

City by creating the requisite infrastructure to facilitate development over the next thirty five (35) years i.e. till 2050. In furtherance of the project objective, the Project Proponent has notified a Master Plan under the APCRDA Act taking into consideration the conditions of the Environmental Clearance.

**121.** The Capital City has been divided into 9 theme cities, namely Government City, Justice City, Financial City, Knowledge City, Health City, Sports City, Tourism City, Media City and Electronic City. Based on this zoning, the Master Plan further divides the City into residential, commercial, green, protected, industrial etc. and also provides for the requisite infrastructure. The Project Proponent has been entrusted with the responsibility to create the infrastructure in the City i.e. roads, transport corridors, Mass Rapid Transport Systems, electricity lines, sewage lines, gas pipelines, parks and green spaces, waste management facilities etc. so that the various zones in the City are ready for development by others. Those developers will then construct government offices, financial institutions, schools, colleges, research facilities, cultural centres, hospitals, hotels, malls etc. over the next thirty five years based on the needs and the prevailing circumstances.

**122.** Under the EIA Notification in case of a project or an activity for which prior environmental clearance is

required, the “Project Proponent” of such project or activity has to follow the procedure prescribed under the EIA Notification and obtain an environmental clearance.

A bare perusal of the EIA Notification makes it clear that the responsibility of obtaining an Environmental Clearance by following the due procedure prescribed therein is on the project proponent.

**123.** Therefore, the abovementioned developers who will be constructing government offices, financial institutions, schools, colleges, research facilities, cultural centres, hospitals, hotels, malls etc. over the next thirty five years based on the needs and the prevailing circumstances, will be the project proponents for those projects and will apply for all the clearances and permissions including environment clearance as per the prevailing law.

**124.** According to the applicant/appellants the respondent State is in process of acquiring a large chunk of land for undertaking a large scale urbanization without any environment impact assessment which is a threat to the environmental area. They have submitted that before taking further steps a detailed study of the environment impact needs to be undertaken in accordance to Environment Protection Act, 1986. Further, it is submitted that the formation of the capital city would require various developmental activities, such as creation of infrastructure for government departments. Such urbanization activities

having wide range requires impact assessment under Section 5 of the Environment Protection Act, 1986 with the object to assess the potential environment impact on any project which prevents any kind of disaster. It has been submitted on behalf of the respondents that the construction is to be made for the capital city in compliance of all relevant laws and after obtaining the environmental clearances.

The new capital city is covering an area of about 217 sq. Kms. According to sub item 8(b) i.e. township and area development project has a limit of covering an area of 50 hectares and or built up area of 150000 sq. mtrs. Therefore, the instant project is covered under category B, in accordance to EIA Notification. Moreover, as per the Notification dated 22.12.2014, the general condition of the earlier Notification dated 14.09.2006 do not apply to sub item 8(a) and 8(b) under item 8 of the schedule. In other words, the capital city project requires impact assessment appraised as B1 project. Therefore, in the present case, the project does not fall in category A, in terms of EIA Notification 2006.

**SEIAA Lacked Jurisdiction:**

**125.** The Appellants have contended that the SEIAA lacks jurisdiction and was not competent to grant the Environment Clearance, mainly, on the ground that the Project includes development of certain Category-A projects

namely and Airport, National Highways, Industrial Zone, a Common Bio Medical Waste Treatment and Disposal Facility and a Common Hazardous Waste Treatment and Disposal Facility.

**126.** The respondents have seriously objected to the said contentions and has submitted that it is without foundation for the following reasons:

- I. No airport is being contemplated in the 217.23 Sq. K.m. of the Project area and no provision for the same has been made in the Master Plan. There is an existing airport in Vijayawada which will cater to the immediate and near future needs of the Capital City.
- II. The Project Proponent is not the competent authority to contemplate development of any National Highway. No National Highway is contemplated as reflected in the Master Plan.
- III. There are three industrial zones proposed in the City as per the notified Master Plan at three different locations and each one of them individually is less than 500 ha. None of the industries proposed in the Industrial Zones in the Capital City fall under Category 'A' or 'B' projects under the Schedule to the EIA Notification. As per the conditions of the EIA Notification environment clearance is not required for an industrial estate of any area below 500 ha which does not house any industry of Category 'A' or 'B'.

Even though these three industrial zones which are located at different places in the city cannot be treated as one industrial zone, assuming them to be one industrial zone, then also as per the conditions of the EIA Notification it will fall under Category 'B' project and the SEIAA is competent to appraise the project.

IV. As per the Schedule to the EIA Notification, all the projects falling under the head "Biomedical Waste Treatment Facility" are categorized as Category 'B' projects.

V. The Common Hazardous Waste Treatment and Disposal Facility which has to be established as per the conditions of the Environment Clearance will be located outside the Project Area and that is why the same is also not contemplated in the notified Master Plan. A separate Environment Clearance will be obtained as per the EIA Notification for this facility.

**127.** The entire argument raised by the applicant is based on the ground that SEIAA lacks jurisdiction because the present project includes development of category A projects such as airport, nation highway, industrial zone, etc. It is on this premise that a question has been raised about jurisdiction of SEIAA, which is not competent for granting of E.C in the project of A category. It would be suffice to say that the projects of category A which have

been named by the applicant are not at all involved in the present case. As for instance, there is no project for airport, in the area of the capital city nor that is development of any national highway contemplated in this case, as is reflected from master plan. In so far as development of industrial zone is concerned it is important to note that all the three industrial areas proposed are less than five hundred hectares each and environmental clearance is not required for an industrial estate which is below 500 hectares and does not house any industrial category A or B. Similarly, the projects falling under biomedical waste treatment plant are category B projects. The common hazardous waste treatment and disposal plant would be located outside the project area for which a separate EC would be obtained as per EIA Notification. In the circumstances of the case the projects are of B category, as of date. Therefore, there is no basis for the contention raised by the applicant that SEIAA lacks jurisdiction and the same has to be rejected.

**Environment Clearance:**

**128.** On 30.04.2015, a contract for conducting the Environment Impact Assessment Study was awarded to M/s Tata Consulting Engineers Ltd (hereafter referred to as the “Consultant”) through public tendering, process, following the criteria laid down by the Ministry of Environment and Forest & Climate Change (hereinafter

referred to as the “MoEF”) and National Accreditation Board for Education and Training.

**129.** The Consultants conducted studies in the proposed Capital City Area during the period from 01.05.2015 to 30.08.2015 before preparing the EIA Report. The studies were conducted with the baseline data in the project area and 10 K.m. radius around it as per the guidelines. As already stated, the EIA Report was prepared as per the Standard ToR.

**130.** The baseline studies for air quality, water quality etc. were carried out during the months of May-June 2015, which is a peak summer period in this area with hardly any rainfall during this period.

**131.** On 05.09.2015, the EIA Report, along with the requisite documents, was submitted to the State Expert Appraisal Committee (hereinafter referred to as the “SEAC”). The said report was taken up for review by the SEAC in its 80<sup>th</sup> meeting which was held for two days i.e. on 10.09.2015 and 11.09.2015. The project was appraised on 11.09.2015 and the meeting was attended by the officials of the Respondent along with the Consultants. The review of the project by the SEAC started around 2.00 p.m. and went on for about 8 hours, till around 10.00 p.m. The members of the SEAC had already gone through and scrutinized the EIA Report and other documents of the project and were ready with their questions which were put



to the representatives of the Respondent after their presentation. After a detailed discussion on the various aspects of the project, certain clarifications were sought by the SEAC and the Respondent was asked to submit the revised EIA Report and the other documents.

**132.** Immediately, the Respondent and the Consultants got onto the job of revising the documents in terms of the queries raised by the SEAC. During this period of about two weeks, the SEAC was being consulted by the Respondent and the Consultants, with a view to ensure full compliance and that the revised documents are to the satisfaction of the SEAC.

**133.** Thereafter, a revised report was submitted to SEAC on 25.09.2015 and the same was taken up for appraisal, in its 81<sup>st</sup> meeting held on 26.09.2015. The appraisal of the project by the SEAC started around 2.00 P.M. and went on for about 7 hours, till 9.00 p.m. After detailed deliberations and being satisfied with the revised EIA Report and the other documents submitted, SEAC recommended to the State Environment Impact Assessment Authority (hereinafter referred to as the "SEIAA") for grant of the environmental clearance in respect of the Amaravati Capital City project, subject to a comprehensive and detailed conditions on each and every aspect of the environment and the proposed development.

**134.** The SEIAA in its meeting held on 09.10.2015, accepted the recommendations of the SEAC and granted the environment clearance. While granting the Environmental Clearance, taking into consideration the commitments given by the Project Proponent/ Respondents with a view to create a world class city based on principles of sustainable development, the SEIAA has incorporated over 90 conditions to ensure the same. Some of the conditions imposed are as follows:

1. The Proponent shall protect and conserve the existing water bodies, create buffer of 30 mtrs on either side of canals and streams, 100 mtrs along the Krishna River and 50 mtrs around all water bodies.
2. All roads will have rain water drains connected separately from the sewage network to the treatment facility of the zone.
3. The proponent shall ensure the construction of rain water harvesting structures and also promote rain water storage.
4. The proponent shall create a green and blue network interconnecting all water bodies and green spaces.
5. The proponent has to ensure that there are at least 125 trees per kilometer along the footpaths and the streets.
6. Deep rooted large foliage plantation along the side of the roads and in the open spaces shall be developed to act as sinks of air pollutants.

7. The Proponent has to establish a minimum of three online continuous Ambient Air Quality Stations in three zones i.e. Residential, Commercial and Business Zones and connect the results to the CPCB/SPCB Website in the 1<sup>st</sup> Phase.
8. The Proponent shall also establish Permanent Online Air Monitoring Stations for Air Quality for every 25 Sq. K.m.
9. Dedicated and physically segregated bicycle tracks with safe street crossings and parking at transit stations, all public places and commercial and institutional buildings have to be established.
10. High quality and high frequency rapid transport system with dedicated lines for bus rapid transit system shall be established.
11. Proponent shall encourage battery operated vehicles by providing a separate lane with the provision for recharging.
12. At least 10% energy needs should be met by renewable energy sources.
13. In addition to solar heaters, the project proponent has to ensure that all buildings shall have installation of solar panels on at least 1/3<sup>rd</sup> area of the roof top.
14. The proponent shall incorporate energy efficiency guidelines (Energy Conservation Building Code) and green building concepts (GRIHA/IGBC/LEED) in the by-laws.

15. The proponent shall prepare a carbon footprint of the city and strive for carbon neutrality.

16. The proponent has to ensure 100% collection and treatment of sewage. This recycled water will be used for non-potable applications such as flushing, gardening, road and vehicle cleaning, HVAC, fire protection, construction activities, industrial applications by laying dedicated pipelines for supply of treated grey water.

17. The proponent shall ensure that the occupiers of all the premises shall install three separate receptacles for biodegradable waste, non-biodegradable waste and hazardous waste.

18. The proponent shall establish, simultaneously with the construction of the city in the first phase itself, a state of the art Integrated Solid Waste Management Facility consisting of Sorting/Material Recovery Plant, Compost Plant, Anaerobic Digestors, Waste to Energy Plant, Construction and Demolition Waste Recycling Plant, Biomedical Waste Facility, Plastic Waste Processing and Recycling Facility and Engineered Landfill Facility.

**Interim EC for Government Complex:**

**135.** In accordance with the condition in the Environment Clearance dated 09.10.2015 granted to Amaravati Capital City, a separate environment clearance was applied for and obtained for the Interim Government Complex which is an interlinked project. The Environment

Clearance for the Interim Government Complex was granted on 09.02.2016. Similarly, all the project proponents for the interlinked projects will apply for an environment clearance, as and when they are taken up over the next 35 years, as per prevailing guidelines.

**Project is located in highly polluted area:**

**136.** The Appellants have relied upon a report of the Central Pollution Control Board titled “*National Ambient Air Quality Status and Trends-2012*” to contend that the project area is “highly polluted”. Firstly, the said report does not relate to “the project area”. The report inter alia is in respect of certain areas in Vijayawada City. Table 5.2a of the said report lists the cities/towns whose Air Quality exceeded NAAQ standards w.r.t. PM10 in 2012 in descending order of Annual Average. Of the 223 cities/towns listed, Allahabad topped the list with Annual average of 347 ( $\mu\text{g}/\text{M}^3$ ) followed by Raipur with 317 ( $\mu\text{g}/\text{M}^3$ ) and Delhi with 291 ( $\mu\text{g}/\text{M}^3$ ). The station with reference to which the appellants had raised the contention, was located in Benz Circle, Vijayawada City. At Benz Circle, the National Highway (NH 16) which is also a part of the Golden Quadrilateral and Bandar Road, passes through and is the busiest Road in Vijayawada. These roads cross each other, making this the busiest junction in the city. Further, NH 65 also passes close by. Based on the data collected at this location, Vijayawada

was placed at number 212 out of 223 towns/cities with Annual Average of 95 ( $\mu\text{g}/\text{M}^3$ ). From this list, it is evident that Vijayawada (on the left bank of the River Krishna) is one of the least critically polluted towns. In any event, the proposed capital city is on the other side (right bank) of the River Krishna and is quite far from Vijayawada.

**137.** The two national highways, which cross the city of Vijayawada, are the major cause for pollution in the city. In any event, this issue would also be addressed by the on-going construction of the Inner Ring-road and the proposed Outer Ring-road. In addition to this, a metro project is also proposed to be undertaken to further strengthen the public transport system in the city which would result in reduced air pollution.

**138.** As far as the City of Amaravati is concerned, the baseline data collection and monitoring activity for the purpose of preparing the EIA Report was carried out during the summer season of 2015. The season being a dry period, there was a greater concentration of dust particles in the air in the project area and its surrounding areas which has vast open lands. As a result of this natural phenomenon, though the concentration of the particulate matter was observed at higher levels, these were well within the permitted limits.

**139.** The Capital City is being planned on neighborhood concept where the essential facilities will be within 400

mtrs. radius and will also promote walk to work concepts. The City would consist of an integrated network of public transport system with footpaths and cycle tracks along all the roads in the City. The Project Proponent proposes only green and clean industries in the City which would not have adverse impact on the air quality.

**Non-compliance of the ToR:**

**140.** Study on the land use based on the details as per the concept master plan and land use, around 10km radius of the project site have been carried out and presented in the EIA Report. The Project area land use details are presented as “Project Area” and 10Km radius details are presented as “Study Area”. Details of flood plain of the River Krishna have been addressed in the EIA Report and also re-demarcated as per the directions of the Tribunal in O.A. 171 of 2015 as well.

**141.** Section 5.12 of the EIA Report elaborately discusses the land use study carried out for the Project Area as well as the Study Area. The extract from Section 5.12 are reproduced below:

*“5.12 Remote Sensing technology has emerged as a powerful tool in providing reliable information on various natural resources and in effective mapping of land use pattern. The term ‘land use’ used in this section includes land use and land cover together. The*

*land use study was undertaken by utilizing three principal resources: namely,*

- *Survey of India (SOI) Topo-sheets No. E44-U6, U7, U10 and U11 of 1:50,000 scale:*
- *Digital Globe’s Worldview-2 Satellite Image (WorldView-2 in Geo-coded False Colour Composite (FCC) and*
- *Ground truth validation for the FCC imageries.”*

Further, results of the above study are presented in Table 5.24 of the report. Thus, the Respondent has complied with the ToR requirement and has also carried out studies in accordance with the Standard ToR.

**142.** As per the EIA Notification, 2006 the concept plan is sufficient to undertake the assessment for an area development project (8b projects). Item 1 of the Chapter “References” in the EIA Report clearly shows that the Capital City Master Plan (Concept Plan), published in July 2015 has been employed in the EIA studies.

**143.** Condition No. 3: The baseline environmental quality studies were carried out in accordance with the EIA Notification, 2006 and guidance documents prepared for Buildings and Area Development Projects. The incremental pollution aspects owing to the proposed project activities have been duly considered under the impact identification exercise taking into consideration the proposals in the Concept Master Plan and the same have been incorporated



in the EIA Report. The studies are in compliance with the Standard ToR.

**144.** Condition No. 5: Studies for slope and drainage pattern had indeed been carried out and the analysis of the study was presented in the EIA Report vide Fig 4.9 (page) Digital Elevation Model prepared from Contours. Based on the studies the number of detention ponds and the reservoirs was given in the EIA Report including their location.

**145.** Condition No. 6: The EIA Report records that the existing tree cover is sparse and close to nil in the project site. The report also provided that trees, wherever cleared will be replanted/trans-located (section 3.2 of Form 1A). The Environmental Clearance also stipulates that necessary clearances shall be obtained in respect of the forest areas, wherever applicable. The proposal for diversion is under consideration by the MoEF.

**146.** Condition No. 22: The costs as to specific projects and specific impact of each project to be undertaken in the Capital City will be known only when the stage comes for setting up of such specific projects (inter linked projects) for which an Environmental Clearance will be obtained as per the EIA Notification, 2006, wherever applicable. There is a specific condition in the Environmental Clearance that the Project Proponent has to obtain separate Environmental Clearances for the interlinked projects for

which an Environmental Clearance is required as per the EIA Notification, 2006. The cost towards implementation of the EMP are given in Section 8.8 of the EIA Report- Environmental Cell cost, Section 8.9- Environmental Management Commitments- both consisting of Capital and recurring costs for the Environmental programmes in the Capital City.

**147.** Further, the cost of environmental monitoring program per year during the construction phase and operation phase have been separately provided in the EIA presentation to SEAC on 26.09.2015 amounting to Rs. 29.35 lakhs per annum and Rs. 52.15 lakhs per annum respectively. This is exclusive of the EMP costs of individual projects by the respective project proponents.

**148.** The capital city development is necessitated by the AP Reorganization Act, 2014. Section 94 (3) of the said Act provides that the Central Government Commitment shall provide the necessary funds for essential facilities being set up in the new capital. Section 94(3) reads as follows:

*“94 (3) The Central Government shall provide special financial support for the creation of essential facilities in the new capital of the successor State of Andhra Pradesh including the Raj Bhawan, High Court, Government Secretariat, Legislative Assembly, Legislative Council, and such other essential infrastructure.”*

**149.** The Amaravati Capital City project is a project undertaken for and on behalf of the Government of Andhra

Pradesh which will be making budgetary allocation for the said project as required. Further, financial aid from financial institution will be obtained with the assistance of the Central and State Governments.

**150.** The project area does not contain any declared ecologically sensitive areas and as such the various contentions made by the Appellant are vague and baseless and unsubstantiated by any facts. The EIA studies were done taking note of the topography, environment and ecology of the Project site which is reflected in the EIA Report. The same have also been taken note of at the time of preparation of the Master Plan.

**151.** Impact of the project on agriculture and socio-economy has not been studied. The studies have been conducted and they are incorporated in Chapters 5.12.4 and 5.13 of the EIA Report.

**152.** Constitution of SEIAA- The composition of the SEIAA is in accordance with the prevailing rules and regulation. Further, the appointment of the members of the SEIAA and their qualification has never been challenged and this issue is now being raised to create prejudice in the mind of this Tribunal.

**153.** The respondent has dealt with the other issues raised by the appellants in note-1 and 2 submitted this this Tribunal during the arguments. The answering respondent has given para-wise replies to all the

contentions of the applicants and the appellants raised in O.A NO. 171 of 2015 and Appeal No. 148 of 2015 respectively in the counter affidavits, replies and additional affidavits filed.

**154.** It is amply clear from the details mentioned above that before preparation of EIA report, a thorough study had been conducted in the light of ToR. Study in respect of land use as per the concept of Master Plan and land use around 10 km radius of the project site had been carried out. The project area land use was categorized as project area and of 10 km radius as study area. The flood plain of river Krishna and re-demarcation was also addressed in the EIA report. Similarly, baseline environmental quality studies, in accordance to EIA Notification, 2006, were also undertaken. Incremental pollution aspect due to the proposed project activity were duly considered and incorporated in the report. The studies for slope, drainage, detention ponds and reservoir were also carried out and incorporated in the EIA report. The EIA report also includes the record of the existing tree cover and wherever the trees are to be cleared they are to be replanted/translocated. Necessary clearances shall be obtained in respect of forest areas, as stipulated in the environment clearance. The EIA report has also included the cost of environmental monitoring program, per year during construction as well as operation phases, under the

Act of 2014. The Central Government is to provide for the necessary funds for essential facilities. As the instant project is undertaken for the State, budgetary allocation would be made by Government of Andhra Pradesh. Further financial aid is to be obtained by the assistance of Central Government and State Government. In such view of the matter, there is sufficient compliance of ToR and the contention raised by the applicant that there had been non-compliance of the same cannot be accepted, for any reason whatsoever.

**Shifting of Bund:**

**155.** Another argument raised by the applicant/appellants is that the respondents are contemplating to shift the existing bund which would result in encroachment on the river flood plain/bed. The respondents have denied the contention and have given detailed history of the bunds in the capital city area and the purpose behind them.

As per the Report titled “*Flood Contingency Plan of River Krishna for the Year 2012-13 in Krishna and Guntur Districts*” published by the River Conservator & Executive Engineer, Krishna Central Division, Vijayawada. Irrigation and CAD Department, Government of Andhra Pradesh, the embankments/bunds on either side of the River Krishna

were constructed prior to 1853 and since then have been expanded, altered and strengthened from time to time whenever required.

In the said Report, a list of villages which get submerged due to the floods in the River Krishna is given. These villages are further classified into those which are located upstream and downstream of the Prakasam Barrage. Those villages are further identified as those located within and those which are outside the bunds. The Report further mentions at what level (MFL) and what discharges at the Prakasam Barrage, these villages were likely to get flooded. This report and the said list have been prepared to enable the concerned officials to issue flood warnings and evacuate the villagers as per the standard protocol in case of floods. None of the villages which are mentioned in the said list are located within the proposed Capital City area.

**Public Trust Doctrine:**

**156.** Another contention raised by the learned counsel for the applicant is in respect of Public Trust Doctrine. It has been submitted on behalf of applicant/appellants that the State is a trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is beneficiary of running waters, air, forest and ecologically fragile lands. State is under a legal duty to protect the natural resources which are meant for public

use and the same cannot be converted into private ownership. Referring to the facts of the present case, the learned counsel for the applicant has sought to draw attention of the Tribunal towards river Krishna, the streams, the lands of the lanka islands, etc. and the development proposed to be done in them for the capital city.

The Public Trust Doctrine, based on English Common Law has become part of our environmental jurisprudence. This concept has evolved by laying emphasis on the doctrine of equality. In other words, a procedure adopted for distribution should be just and non-arbitrary and must be guided by constitutional principles including the doctrine of equality and larger public good. It is the duty of the State to ensure that a non-discriminatory method is adopted for distribution and alienation which would necessarily result in the protection of State and public interest. There is an obligation on the Government to ensure that their transfer or alienation for commercial exploitation is in a fair and transparent manner and only in pursuit of public good. Though the public trust doctrine under the English common Law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts have expanded the concept of the public trust doctrine in protecting all ecologically important lands, for example fresh water, wet land or

riparian forests. These concepts have now become part of Indian legal thought process. Reference may be made to some of the pronouncements: *Vellore Citizens Welfare Forum v. Union of India* (1996) 5 SCC 647, *Indian Council of Enviro-Legal Action v. Union of India*, AIR 1998 SCW 3861, *M.C Mehta v. Kamal Nath*, (1997) 1 SCC 388, *T.N Godavarman Thirumulkpad v. Union of India*, JT 1997 (10) 697 and *M.C Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India*, (1997) 3 SCC 715.

In the instant case, the natural resources are being distributed in a fair, just and non-arbitrary manner for the benefit of the public at large. The distribution of land, the development of the lanka islands, regulation of natural resources of water, etc are being done in good faith, for the public good and in their interest which may in some manner result in encroaching upon such natural resources. Moreover, the public resources in the present case are not being diverted for commercial/private interest but for a project which will be for larger public good and serve interest of the State. Therefore, in our considered opinion, the Doctrine of Public Trust is not attracted in the present case.

### **PIL before Hon'ble Supreme Court:**

**157.** Another important aspect of the matter is that a Public Interest Litigation being W.P. (Civil) No. 632 of 2016 was filed by before the Hon'ble Supreme Court inter-alia



against the setting up the Amaravati Capital City on various grounds including environment and loss of livelihood etc.

The Advocate for the Applicants/appellant is Petitioner No. 3 in the said PIL. The synopsis of the petition filed before the Hon'ble Supreme Court states:

*“The present Writ Petition preferred by the Petitioners herein praying for the kind indulgence of this Hon'ble Court for issuance of a Writ of Mandamus or an appropriate Writ to protect the following:*

- *15 lakhs acres of fertile lands*
- *Livelihood for workers dependent on agriculture*
- *Food security*
- *Public money in thousands of crores*
- *Environment, ecology, flood plains*
- *Rule of law, Black money circulation*
- *Protection of river Krishna*
- *Protection of large number of villages, towns in Krishna basin from inundation.*

*That the Andhra Pradesh government has proposed an ambitious project in the name of building a Green Field city for the purpose of Capital for the residuary state of Andhra Pradesh after bifurcation of the state on the basis of Andhra Pradesh Reorganization act 2014 (in short Reorganization Act). But the present proposal is against the provisions of Reorganization Act and against the recommendations of Experts committee appointed by Union of India.*

*That as per “Section 94 (3) of the Reorganization Act has assured that Government of India would provide “special financial support for the creation of essential facilities in the new capital of Andhra Pradesh State, including, the Raj Bhawan, High Court,*

*Government Secretariat, Legislative Assembly, Legislative Council, and such other essential infrastructure.”*

*But the State of Andhra Pradesh proposed a very ambitious project to build a green Field Capital city i.e. Amravati with an estimated cost of Rs. One lakhs twenty (1.20 lakhs) Crores and it has proposed to spend Rs. 42, 935 crores in a span of next five years for the construction of capital city.*

*While proposing a large Capital City with 217 square kilometers and Capital City Region with an area of about 8420 square kilometers which is bigger than Delhi, Chandigarh, Buvaneswar, Gandhinagar and other major cities. The proposed AP Capital region will be larger than states such as Sikkim, Goa. That the area which has been proposed for capital region is consisting of very fertile lands which can yield 3-4 crops a year and situated on flood plain, river and forest lands. That on one hand the state of Andhra Pradesh has proposed a Seed capital with 900 acres for Capital functioning such as Assembly, High Court, Rajbhavan, Secretariat in Capital city, where as the government authorities are hurriedly constructing whereas the government authorities are hurriedly constructing Temporary office complex in 45 acres of land with very excessive rates to help the contractors. It is submitted that the state of Andhra is offering Rs. 3350 per square feet for the two contact firms which is more than double of actual cost of construction. This shows the State of Andhra Pradesh do not have appropriate planning and the hurried actions of the authorities are creating clear doubts among the people regarding large scale corruption and wastage of public money.”*

**158.** In para 1 of the petition it has been submitted by the petitioner as follows:

*“ 1. That this Public Interest Litigation has been filed to protect; i) 15 lakhs acres of fertile lands, ii) Livelihood for workers dependent on agriculture, iii) Food security Public money in thousands of crores, iv) Environment, ecology, flood plains, v) Rule of law, vi) Protection of river Krishna, vii) Protection of large number of villages, towns in Krishna river basin from submergence, viii) Large scale wastage of public money that has been proposed to be spent by the State of Andhra Pradesh and the Union of India, ix) to protect the fundamental rights of daily-wage agricultural labourers, tenant farmers, Assigned land holders and traditional farmers whose rights are being infringed because of the unscientific approach of the Andhra Pradesh Government and the Union of India by choosing 8240 square kilometers as the Andhra Pradesh Capital Region which is likely to damage around 20 lakh acres of “Multi Crop, Very Fertile lands” in the region which is known as “Rice bowl of India”. X). because of change of proposals by the Respondent No. 2 and Respondent No. 3, there is every possibility of large scale nepotism, corruption, circulation of black money, atrocities and damage to the eco system in the region and river Krishna.”*

**159.** The prayers sought in the said Writ Petition are the following:

*“c. issue Writ Mandamus to direct the respondents No. 1,2,5,6 to appoint an expert committee, preferably headed by a retired Judge along with the experts of town planning, environment, social, agriculture and economic fields, to study the feasibility of proposed*

*Capital City on eco sensitive zone, to suggest alternatives if any and/or:*

*d. To direct Respondents No. 2, 3 to restrain from allocating contracts in fertile agricultural lands without the consent of this Hon'ble Court appointed committee and/or:*

*e. To direct the Respondent No. 2 and 3 to provide compensation for the farmers, agricultural labour, artisans who lost their livelihood due to clearing of agriculture activity in Capital region and/or:.....”*

**160.** The Hon'ble Supreme Court had dismissed the said matter on merits on 12.08.2016. The Order is as follows:

“Hon'ble Supreme Court of India  
Writ Petition(s) (Civil) No(s). 632/2016  
Order

Date : 12/08/2016

It was heard on 12.08.2016 and then it was quoted.

“*Heard.*

*We do not see any merit in this Writ petition, which is hereby dismissed.*

*Applications, if any, shall also stand disposed of.”*

As is evident from the aforesaid pleadings as well as the relief sought in the Public Interest Litigation before the Hon'ble Supreme Court, the subject matter therein was the same as in the present case. Both the cases were initiated on behalf of same parties as in PIL the learned advocate for the appellant/applicant in the present case is none else but petitioner no.3 in the said PIL. The Honble Supreme court had declined the Writ Petition on merits. Therefore, ‘the principle of Constructive Resjudicata is attracted in

the instant case and for that reason the appellant/applicant are not entitled for any relief from the Tribunal and their application/appeal deserves to be rejected.

**Doctrine of Fait Accompli:**

**161.** In the instant case by the Act of 2014 published on 01.03.2014 the erstwhile State of Andhra Pradesh was reorganized into two states namely; Telangana and Andhra Pradesh. A new State of Telangana came into existence on 02.06.2014. Further, Hyderabad is to remain as a common capital of both the States for a limited period of ten years. For the purpose of setting up of the capital of new Andhra Pradesh, the Act provided for constitution of an expert committee which was appointed by Government of India in March, 2014 and it gave the report with regard to alternatives for new capital city on 28.08.2014. In consequence thereof the State Government issued order on 30.12.2014 for identifying location of the capital city of new Andhra Pradesh.

Further steps in this regard were immediately taken, keeping in view the urgent need of new capital and the fact that capital of Hyderabad was to remain capital of new Andhra Pradesh only for ten years, by the Government by issuing various orders, as for instance, the Andhra Pradesh Capital Land Pooling Scheme (Formation Implementation) Rules, 2015. It was only after many steps

having been taken by the Government of Andhra Pradesh that the petitioner/appellants thought of challenging the aforesaid actions of by the State Government. In this regard, they had first wrongly approached Hon'ble Supreme Court of India and thereafter came before the Tribunal.

In the meanwhile much water had flown in respect of the steps to be taken for setting up the new capital city, particularly, because of the time frame which was mandated under a statute that a number of establishments had been set up. According to Section 5 of the Andhra Pradesh Reorganization Act, 2014, after expiry of ten years, Hyderabad was to be the exclusive capital of State of Telangana and a new capital had to be established for the State of Andhra Pradesh. In these circumstances, the state of Andhra Pradesh had to take up the establishments of new capital city expeditiously.

The capital city has been divided into nine themes cities, namely; Government city, Justice city, Financial city, Knowledge city, Health city, Sports city, Tourism city, Media City and Electronic city. They have further divided the city into residential, commercial, green, protected, industrial, etc. with requisite infrastructure. It is the project proponent who has the responsibility to create the infrastructure in the city i.e. roads, transport corridors, mass media system, electricity line, sewage lines, gas

pipelines, parks, green places, waste management facility, etc. so that zones in the city are ready for development.

In view of the urgency and need for establishing the new capital, as per the environmental clearance dated 09.10.2015, a separate clearance for interim government complex which is an interlinked project, was granted on 09.02.2016. Similarly, other projects, based on the requirement and priority were also taken up. As for instance, government offices, financial institutions, hospitals, etc. The project proponent for these interlinked projects were to seek environmental clearance from time to time. Consequently, number of building projects had already been taken up in the intervening period, in accordance to their priorities. In all such projects, the government had spent a substantial amount, running in crores. Besides, an amount of Rs, 128.92 crores had been spent by the State Government as annuity for loss of crops, to the farmers. Another instalment of Rs. 141 crores had also been released in the next year, for the same purpose. Before this, the State Government had to spend a huge amount for the farmers of Lanka islands who had to be rehabilitated and payments made for the land pooling scheme as they had volunteered for the same.

**162.** In view of the aforesaid development of new capital city for the State of Andhra Pradesh which has taken place with expedition because of the time frame, given for coming

up of the new capital under the statute, substantial progress have already taken place. In such a situation, the Doctrine of *Fait Accompli* is attracted. A stage has now been reached where the position can be reversed only at a huge cost not only in financial terms but even environmental and human costs if the infrastructure already created were ordered to be demolished. In such circumstances the judicial Courts and Tribunals had been adopting a just and balancing approach by permitting the remaining work of the project to be completed. However, they have also provided stringent safeguards in the interest of environment.

The Hon'ble Supreme Court in the case of *Sterlite Industries (India) Ltd. Vs. Union of India (UOI) and ors.* (2013) 4 SCC 575 had followed this doctrine. After passing of the said judgement by the Hon'ble Supreme Court, the Tribunal had directed the industry to take precautionary measures and the Pollution Control Board was to impose more stringent conditions while permitting the industry to operate (*M/s. Sterlite Industries (India) Ltd. Vs Tamil Nadu Pollution Control Board, 2013 (ALL (I) NGT REPORTER (DELHI) 368*).

In view of the above, we are of the considered view that it would be just and proper that the project for the establishment of the new capital of State of Andhra Pradesh may not be obstructed to at this stage, also for the



reason that the same has to come up within ten years from the passing of Andhra Pradesh Reorganization Act, 2014. However, the ends of justice would meet if the safeguards provided by the Tribunal and those provided in EC are complied with in the letter and spirit by the State Government for the purpose of healthy environment and welfare of the people at large.

**Precautionary Principle:**

**163.** Before parting with this case, we consider it appropriate to make certain observations with regard to Precautionary Principle. Though steps have already been taken in respect of establishing the capital for new State of Andhra Pradesh, but still much more remains to be done in future. Therefore, it is imperative for the State Government to adhere to the Precautionary principle. It may be required in the present situation and also in the times to come because the project of capital city would carry on for a sufficiently long period. Needless to say that it is more appropriate to take steps at this stage as delay may render them absolutely impracticable and even otherwise, prevention is better than cure. The precautionary principle was evolved at the International level but it has been statutorily recognized in our country which is reflected from Section 20 of the National Green Tribunal Act, 2010. Precautionary principle is a pro-active method of dealing with the likely environmental damage.

Efforts should always be made to avoid major environmental problem before more serious consequence and side effects become obvious. In the present case which a big project and is a multifaceted one, we are of the view that this Principle should be applied with greater rigour, particularly when faults or acts of omission or/commission are attributable to the project Proponents.

It is with this purpose that we consider it just and proper to impose certain additional conditions, as would be mentioned hereafter, to the environment clearance. In view of the peculiar facts of this case a more detailed study on hydromorphology of the area needs to be undertaken to plan for adopting methods for water retention with the purpose of optimising water conservation. Similarly, before altering any flood plain, a study is required to be done. Likewise, the project proponent should not be permitted to alter the river course or that of natural storm water which can increase soil erosion and decrease ground water recharge. The existing embankments should not be altered, except for the purpose of flood protection. In order to have effective and proper implementation of the condition laid down by the Tribunal, it is deemed proper to have a proper committee constituted. Such committee would not only ensure the execution of the conditions in a time bound manner but also inspect the project to see that all environmental safeguards are in order. Above all, such

committee shall submit its report to the Tribunal from time to time.

Even the Principle of Sustainable Development, by necessary implication, requires due compliance of Precautionary principle as well as the doctrine of Balancing. Such an approach can only protect the interest of environment and ecology in the capital city area of the new State of Andhra Pradesh. Therefore, efforts to be made by the project proponent, in furtherance of the aforesaid directions by way of additional conditions in the EC, formation of the committee for regulation for the projects yet to come up in future as much would be forthcoming in this big multifacet project of the capital of Andhra Pradesh, it is essential to prevent environmental problems which may arise in the coming times.

**Eco-restoration:**

- 164.** Further, it is equally essential to take effective steps for management of eco-restoration of the capital city area for the State of Andhra Pradesh. As it is reflected from the material on record and mentioned herein above, the State Government has made preparation and taken up the steps for managing restoration of ecology of the area but considering it as a dire necessity we would direct the State Government of Andhra Pradesh to take this issue on priority and frame schemes for ecological restoration through removal of invasive species, re-establishment of

appropriate native plant communities, offering assistance in utilizing the opportunities extended for ravine reclamation through improved vegetative cover supported by appropriate soil and water conservation measures. The aim should be to strengthen the eco-restoration for improving the governance of natural resources.

**165. Reasons in favor of the project in consonance with sustainable development.**

1. It would be relevant to mention here that it is necessary to strike a balance between development and environment protection to facilitate economic growth as well as to secure adequate adherence to the cause of environment. National Green Tribunal Act, 2010 mandates that while passing an order or decision, the Tribunal is to apply the principle of Sustainable Development. The concept for sustainable development implies development which would not severely degrade the environment. But this does not mean absence of environmental impact. It means a minimal impact which can be endured / tolerated. Further it means that environment will not be degraded to such an extent that future generation will be deprived of a clean and healthy environment to a reasonable extent.

The Hon'ble Supreme Court, in the case of Lafarge Umiam Mining Private Limited vs. Union of India" (2011) 7 SCC 338 has observed as under:

"75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapable requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of "sustainable development". It is equally well settled by the decision of this Court in Narmada Bachao Andolan v. Union of India that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of a due diligence exercise). In such cases, the margin of appreciation doctrine would apply. 76. Making these choices necessitates decision, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental

protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties requires proper decision-making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.”

**2.** The State Government, after consultation with expert of urban development, public organization and considering various aspects of public welfare, finance, accessibility, environment, etc. identified Amravati as the capital city area. The capital city area is located on the border of Guntur and Krishna district which is spread over 217.23 sq. km and consisting of 24 revenue villages and part of Tedapalli municipality falling in Guntur District, covering Thulluru Maglagiri and Tedapalli Mandal. It has a combined population of one lakh. There are 27000 houses, 84 primary schools, 11 primary health centres and many commercial establishments. The capital city area is centrally located and is well connected with the other parts of new State of Andhra Pradesh. It has the advantage of the urban area of Vijayawada-Guntur

which is the highest in respect of water resources, connectivity and overall regional development. It was on the recommendation of the committee that the State Government had decided not to locate the capital in either of the urban areas so as to avoid their drawbacks. The cities/towns of Vijayawada-Guntur, Tenali and Manglagiri were kept outside capital city area since they are already congested. In view of the project for capital city of the State, the development plan is divided into three phases. The first phase would be between 2015-2025, the second 2026-2035 and the third 2036-2050. This has been done so as to ensure that the growth of the city is organic and gradual, in order to ensure sustainable development.

**3.** Although the applicants have alleged that the capital city is prone to flooding from river Krishna, on the basis of certain documents, but the fact is that the areas mentioned in these documents do not fall within the proposed capital city boundary. The reference to Guntur made in these documents is with regard to the districts, as a whole and not to any particular area falling within the proposed capital city. Apart from it there is no flooding in the capital city area from river Krishna because of the existing embankments/bunds. Therefore, the proposed city is not located within flood plain. Dr. D.D Prasada Rao, former Director of Indian

Space Research Organization/National Remote Sensing Center has clarified that the area delineated as flood plain in the map of EIA report is genetically referred to a flood plain in geomorphological terms and that is not an active flood plain. This also substantiates the finding of the Expert Committee. Any construction activity in this area will not lead to any adverse effect on hydromorphological character of the area. It is stipulated in the E.C issued to the capital city that all construction in this area would have well known engineering interventions and would have accompanying water harvesting measures that contribute to the ground water recharge. The Irrigation Department would not only monitor the flows but also keep a record of the flows of the river. When the applicants disputed that demarcation of flood plain, on the suggestion of the Tribunal, the respondent constituted a committee for demarcation of flood plain, consisting of Dr. V.V. Srinivas, K. Ravi and D. Kasivisweswara Rao. The committee had observed that 2009 floods were contained within the bund along the capital city. There is a buffer of 100-300 mtrs between the river margin and the bund, all along the Capital city. This buffer is there both upstream and downstream of the Parkasam Barrage and in certain places it is even more than 500 mtrs. The Committee



had also conducted flood frequency analysis which makes it evident that flood from river Krishna does not cross the embankment/bund. Hence, the area beyond bund is not a flood plain.

4. Another concern which has been taken care of by the Respondents is in respect of the dams, in or around the capital city area. All the dams are put on constant checks and are operated and monitored as per the guidelines. Despite the capital city being located in a safe zone, with abundant caution and taking into consideration an extreme and unlikely scenario of a dam breaking upstream of river Krishna, a level of +25 meters has been arrived at for the critical establishments. The critical infrastructure includes command and control area, hospital, police station and important government and other establishments, including the main access road. This level has been proposed for the purpose of evacuation, safe shelter, ensuring continuity of essential services and safety of the key installations. In case they are to be established in areas below this level, they are proposed to be constructed on raised platforms i.e. on pillar and stilts. The principle of sustainable development has been adhered to by incorporating certain unique features in the master plan. Based on the study of 1 in 1000 years probable flood, the drainage network

including the canals have been designed to take care of such scenario. They are designed to take water to the designated area, such as stadiums, park, right of way of corridors and to prevent inundation of key installations, residential and commercial areas.

- 5.** As regards Kondaveeti vaghu it may be mentioned that it is a seasonal stream which is dry for most part of the year. It temporarily inundates for few days in a year. The Government has made plans to address the issue of inundation by Kondaveeti vaghu. Topographical and Hydrological surveys have been completed and all measures are being finalised for employment in consultation with the Expert Committee constituted by the Government to address the issue in such a way that not only this temporary inundation is prevented but excess water is stored and utilized to meet the needs of the capital. Several ameliorative measures are being adopted to address the issues. It is proposed to construct the retention ponds/ reservoir to store water. Such a proposal is part of the notified Master Plan as well as EIA Report which has been considered by SEAC and SEAAC. The reservoir/ pond is proposed to be constructed outside capital city to store the water received by Kondaveeti vaghu from its catchment area. The excess water, if any, will be carried through capital city or which would also be stored in ponds. The

unutilized water stored in these detention ponds which flows into the sea, would be used for meeting the water requirement of capital city. Apart from it, pumping facility is planned, for any excessive water, into river Krishna and the work for the same has been started.

It has been submitted by the counsel for respondent that all the encroachments will be removed so as to restore the natural course of Vaghu. Desiltation is proposed to remove the congestion in the vaghu. The Vaghu Porambok lands adjoining the banks of vaghu which has weathered due to encroachments, will be restored and proper green buffer along with the Vaghu will be established.

**6.** The Applicant had submitted that the wet lands in the area needs to be protected. The report titled as “Nation Wetlands Atlas: Andhra Pradesh” was prepared and published in March, 2011 by Space Application Center, ISRO. The said report identifies all the wetlands in the erstwhile State of Andhra Pradesh, district wise and broadly categorized as Inland and Coast Land Wetlands. The capital city is located in Guntur district which is 60 to 80kms away from the coast and as such it does not come under the coastal region. The geographical area of the district is 11391 sq. kms out of which wetland constitute 5.94% of the area. This includes inland wetland, coastal wetlands

and wetlands, which are mainly tanks. The district comprises of 1408 wetlands out of which 639 have been mapped. Besides, there are 769 small wetlands. There is only one natural wetland excluding the rivers and the streams which is not within the capital city area. It is proposed in the Master Plan to create a new water bodies which will increase the extent of water bodies by 1215 acres. Consequently the total area of water bodies in the capital city would be 1813 acres, which is an increase of 50.70%. After including vaghus and canals the overall increase in water bodies would be 197.24%. The natural course of Kondaveeti Vaghu will be restored and the existing width of 6 to 30 mtrs is going to be increased upto 30 to 90 mtrs with a green buffer zone of 30 mtrs on either side. Therefore the total area would be 336 acres and 627 acres, including buffer zone.

7. Five new canals are proposed to be constructed which will cover further area of 1410 acres including green buffer. The concerned department such as irrigation, planning and CRDA are evaluating the technical options for best utilization of Kondaveeti Vaghu and Palavaghu in a sustainable manner, in the capital city. A separate system of storm water drain has been planned so as to avoid mixing it with waste water. The storm water drains are going to be integrated, on the

basis of topography, with all the water bodies in the city which would help in maintaining them and also in ground water recharge. All the water bodies in the city will be having a buffer zone.

- 8.** The Applicant had raised the question with regard to the people who are residing in Lanka Islands and their lands. It was on account of change in the course of river Krishna that certain areas of the main land had been segregated and formed the islands. Some of the Lanka Islands remained connected / attached to the main land, on either side of the river. Many of the inhabitants of Lanka Islands have themselves opted for giving their land in the Land Pooling Scheme (notification dated 05.12.2015). The residents of Lanka, under the said scheme, are to be rehabilitated and given land in the main land of the capital city. The State Government is to streamline the land of Lanka islands under the directions of river conservator after due clearances and only limited use would be permitted on these lands. Therefore, the Government is taking appropriate steps in respect of residences for people of Lanka Island as well as their agriculture lands for which they are being given under land pooling scheme. Steps have been taken for rehabilitation of such people.

9. Therefore, from the aforesaid facts and circumstances it is amply clear that the State of Andhra Pradesh has been taking appropriate and adequate steps in the nature of preventive and precautionary measures for sustainable development while bringing up the project of its capital city. Several steps, as mentioned above, have been taken by the State Government so as to have minimum impact on the environment which would balance between the development of the capital city and adequate protection to the environment.

**166.** It may also be noticed at this stage that principal contention of the Applicant is that the construction is being done in the flood plain and in fact the entire area of development is located within the flood plain which will cause tremendous ecological and environmental degradation. On the other hand, the respondents contended that the flood plain is not a flood plain in the essence in which understood in common parlance or even legally. There is regular bund constructed which protects the area from the rigours of flood of the rivers. Once the matter is examined holistically it would be evident that protection to the flood plain is provided by construction of bund as well as by raising height of some proposed buildings to ensure that the floods do not cause any serious adverse impact on the person and property and to the entire city at large. Since the State is under

statutory obligation to construct its capital within the stipulated time and more than substantial part of the State's land is located on the banks of different rivers. The State has to choose a site which was chosen after examining all the alternative sites. The cumulative effect of this reasoning would be that the proposed project should not be rejected in its entirety particularly keeping in view the observation of the Hon'ble Supreme Court of India in the case of Govt. of NCT of Delhi & Ors. vs. Anand Arya & Ors. AIR 2016 SC 2999. However, certain regulatory restrictions should be placed to ensure protection of environment and ecology which are being imposed hereinafter besides directing compliance to the conditions of the environmental clearance.

One of the arguments advanced on behalf of the State and the project proponent, which we find to be in consonance with the Principle of Sustainable Development and thus, acceptable, is that the entire planned city is going to be a non-polluting city. Under their project, they are going to introduce electric buses to avoid emission effect on ambient air quality, they will introduce waterways to make transportation system more public oriented and less congested, they would introduce substantial reuse and recycling in the city and the city is proposed to be carbon neutral. Furthermore, the entire sewage shall be collected and there will be no unauthorized and unregulated

colonies permitted in the capital. The sewage so collected shall be treated and principle of re-utilization and reuse will be implemented to the substantial discharge.

The clean energy will be adopted as the principal source of energy. The project proposes to generate solar power by encouraging roof top panels which will be substantially utilized particularly in the government sector.

It is directed that at the very initial stage of development, the State and the project proponent shall provide upon due identification of the sites for establishing/constructing STPs, municipal solid waste, landfill and management sites and such other public utilities and the construction thereof should start prior and in any case simultaneously with the development of the project. It is further directed that in a major project in the city commercial, residential or public sector should be directed to install its own STP's and provide for due system and mechanism for management and disposal of municipal solid waste.

**167.** Having deliberated upon the various aspects of this case elaborately as above, we would now consider the order and directions which are required to be passed in the interest and circumstances of the present case. The Tribunal has to take into consideration the three settled principles of environmental jurisprudence i.e. Principle of Sustainable Development, Precautionary Principle and



Polluter Pays Principle. The final order that we propose to pass would be founded on the application of these principles to the facts of the present case, while ensuring protection of the environment and ecology at the city in question. We have already held that the execution of present project, if carried out with due care, precaution and in consonance with the conditions imposed for environmental and ecological protection, would not be prejudicial to environment and ecology. The Tribunal has to balance the various factors which itself is an essential feature of Principle of Sustainable Development. The city project is being undertaken as a necessity of executive and legislative decisions taken by the respective competent forums. The State has to have its capital and as already discussed, no better site than the present one has been brought on record of the Tribunal. Large scale works of the project have already been executed at huge public expense and any prohibitory directions at this stage would not only jeopardize the financial interest of the State but would even become a serious environmental issue, capable of degrading the environment and ecology of the area to disadvantage of the public interest as well.

**168.** Thus we issue the following order and directions:

- I.** While declining to set aside the environmental clearance dated 9<sup>th</sup> October 2015, granted to the project, we hold and declare that the project, subject

matter of the present application, falls under category B of the EIA Notification of 2006 and thus imposition of additional conditions would be necessary. They shall be applied *mutatis mutandi* to the conditions mentioned in the environmental clearance already granted to the project by the competent authority.

**II.** We direct that the following conditions shall be read as part of the environment clearance:

- 1) The project proponent shall conduct or cause to be conducted a comprehensive study on hydrogeomorphology of the area with a view to effectively plan water retention ponds/reservoirs, storm water drains and their interconnectivity, so as to optimize water conservation, both surface and sub surface.
- 2) Any alteration of the flood plains by construction of storm water drains, retention ponds and related development within the capital city should be done only after conducting a study.
- 3) No alteration of the river or natural storm water morphology, flow pattern and location by way of straightening shall be permitted, as such alteration may result in increase of soil erosion, sediment transport due to raised velocity and decrease in ground water recharge which may reduce base flow during the dry season.

- 4) No alteration to the pre-existing embankments if any should be permitted except as may be required for its strengthening for flood protection of the proposed Capital City. Even such exercise should be undertaken after detailed study of the flood pattern and hydraulics of the river or the storm water drains.
- 5) All bulk generators of municipal solid waste in the proposed constructions, both residential and non-residential, must necessarily segregate waste at the source and process entire biodegradable waste by composting or bio-methanation within the premises.
- 6) The State or its instrumentalities should notify Building bye laws for rain water harvesting, use of solar energy, to have water saving fittings and fixtures in buildings, including use of treated grey water for non-consumptive uses like flushing and gardening and other horticultural and agricultural uses.
- 7) State should prepare a comprehensive City specific action Plan to mitigate impact of climate change with a view to achieve carbon neutrality, as envisaged in the EC, within next six months and prepare a sector specific road map for the same.

8) All the hills and hillocks in the catchment area of KondaveetiVagu, its tributaries and other storm water drains/channels should be treated with intensive soil and water conservation measures including afforestation so as to minimize surface run off and improve ground water recharge.

9) The capital city has about 251 acres of forest land which should be preserved as green lungs of the City and not to be diverted for non-forestry uses or even for uses like parks or recreational activities as that will alter its natural characteristics and deprive the capital of the ecosystem services which a natural forests provides, as opposed to a plantation forests.

**III.** In order to ensure proper implementation and compliance of the directions contained in this judgment and also to have requisite regulatory and supervisory control over the performance of the project proponent in the interest of environment and ecology, we constitute the following committees with the functions stated there-under:

- I. Supervisory Committee: This Committee shall consisting of the following Members:
  - i. Additional Secretary, Ministry of Environment, Forest & Climate Change – Chairman of the Committee.

- ii. Additional Chief Secretary, Environment of the State of Andhra Pradesh who shall be the Member-cum-Nodal Officer of the Committee.
  - iii. Senior Scientist nominated by the Director of National Institute of Hydrology, Roorkee, Uttarakhand.
  - iv. Senior Scientist nominated by the Director of Indian Institute of Science, Bengaluru.
  - v. Member Secretary of the Andhra Pradesh Pollution Control Board.
  - vi. Professor N.J. Pawar, Department of Geology, Savitribai Phule Pune University.
- II. Implementation Committee: This Committee shall consist of the following Members:
- i. Additional Chief Secretary, Environment of the State of Andhra Pradesh – Chairman of the Committee.
  - ii. Nominee from the Ministry of Environment, Forest & Climate Change.
  - iii. Member Secretary of the Andhra Pradesh Pollution Control Board.
  - iv. Senior Scientist nominated by the Director of Indian Institute of Science, Bengaluru.
  - v. Dr. Venkateswarlu Kadiyala, formerly Professor of Microbiology, Sri Krishnadevaraya University, Anantapur, A.P.

The Supervisory Committee shall meet at least once in three months to finalize all policy directions and the

manner in which the order granting Environmental Clearance and conditions imposed in this judgment are to be carried out by the project proponent.

The Implementation Committee shall meet every month and would ensure that the directions contained in this judgment and as decided by the Supervisory Committee and/or such other conditions as are imposed in future are actually implemented at the ground by the project proponent. Implementation Committee shall prepare compliance and implementation report.

The Members who are nominated or appointed to the Committees should not have been the Members who were involved in preparation of the DPR, EIA process and grant of Environmental Clearance.

- IV.** The committee shall ensure that the conditions stated in the order dated 09.05.2015, while granting EC to the project and the conditions mentioned in this judgement are complied with, without any delay and default.
- V.** The Committee shall provide a time frame within which such conditions should be executed and it must have a correlation with the progress of the project.
- VI.** We direct that the Committee shall conduct a comprehensive inspection of the entire project of

capital city at Amravati. While taking into consideration all environmental factors like water, forest, streams, wetlands, environmental and ecological impacts of the project as well as mechanisms for prevention and control of pollution, the committee may issue additional conditions or directions to the project proponent, which should also be time bound. The project proponent shall be obliged to carry out the condition/direction within the period stipulated by the Committee.

**VII.** The Committee shall submit its report to the Tribunal in every six months. However, the first report of the Committee should be placed on record after expiry of three months from the date of pronouncement of this judgment. As and when the reports are received by the Registry, the same shall be placed on record for directions.

**VIII.** The Committee would be at liberty to recommend any remedial or preventive measures that the project proponent should take to prevent environmental degradation.

**IX.** The EC lays down amendment to building by laws for approval subject to Rain water harvesting, use of treated grey water, use of water conserving fittings and fixtures, use of fly ash bricks for building construction etc. The Committee shall look into the

compliance of these conditions among other conditions.

**169.** The project proponent shall furnish a revolving bank guarantee in the sum of Rs. 5crores to the satisfaction of the Committee. This bank guarantee shall be liable to be encashed in the event the project proponent is found to be defaulting or violating any conditions of the EC, conditions stated in this judgment, and the conditions/directions imposed by the Committee. However, the Committee would direct encashment of the bank guarantee only after giving a show cause notice to the project proponent, in accordance with law and subject to orders of the Tribunal.

**170.** Accordingly, with the aforesaid directions we dispose of Original Application No. 171 of 2015, Appeal No. 148/2015, Appeal No. 05/2016 and Appeal No. 24/2016. There shall be no order as to cost.

**171.** As the Original Application as well as the Appeals have been disposed of today, M.A Nos. 510/2015, 1148/2015, 1108/2016, 1325/2015, 1326/2015, 56/2016, 64/2016 and 399/2016 do not survive for consideration and are also disposed of, with no order as to cost.

.....  
Justice Swatanter Kumar  
(Chairperson)



.....  
Justice Raghuvendra S. Rathore  
(Judicial Member)

.....  
Bikram Singh Sajwan  
(Expert Member)

**New Delhi.**  
**Dated: 17<sup>th</sup> November, 2017**



**NGT**