

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

**M.A. No. 603 of 2015 & M.A. No. 596 of 2015
In
Original Application No. 222 of 2014**

Forward Foundation & Ors. Vs. State of Karnataka & Ors.

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U.D.SALVI, JUDICIAL MEMBER
HON'BLE DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER
HON'BLE Mr. RANJAN CHATTERJEE, EXPERT MEMBER**

Present:

Applicant:	Mr. Raj Panjwani, Sr. Adv. with Mr. Rishabh Pariku, Adv.
Respondent Nos. 7 :	Mr. B.R. Srinivasa Gower, Adv.
Respondent No. 8 :	Ms. Shweta S. Parihak and Mr. Ankur Skulkarni, Adv.
Respondent No. 9 :	Mr. Shekhar G. Devasa and Mr. Manish Tiwari, Adv.
Respondent No. 10 :	Mr. Vaibhav Niti, Mr. Devashish Bharuka, Suraj Govindraj, Mr. Gopal Jain and Mr. Vaibhav Choudhary, Adv.
Respondent No.11&12:	Mr. Sajan Poovayya, Sr. Adv. with Mr. Saransh Jain and Mr. Praveen Sehrawat, Adv.

Date and Remarks	Orders of the Tribunal
Item No. 13 September 10, 2015	<p>Vide our Judgment dated 07th May, 2015, we have constituted a High Power Committee to comply with the directions contained in Paragraph 85 of the judgment. The judgment passed by the Tribunal was in the nature of preliminary decree and final judgment/ decree on behalf of that was passed after receiving report of the High Powered Committee. The High Powered Committee firstly did not file the report within the stipulated time and now when the report has been filed before the Tribunal, we have no hesitation in observing that the report does not comply with the directions of the Tribunal in its true spirit and substance. <i>Inter-alia</i>, but primarily, we would point out the following deficiencies and non-compliance of the directions issued by the Tribunal in its judgment:-</p>

1. We may notice that the report is not comprehensive and non-compliant in all its major aspects. The stand taken by the Lake Development Authority of Bangalore before the Tribunal is different than the one on the basis of which now the report has been submitted. The committee has also not mentioned the factors relevant for determination of environmental compensation.

2. It is stated in the report that there is unauthorized encroachment and possession taken by the builders of nearly 3 acres and 10 guntas. However, as it appears from the records, the State had allotted 63 acres and 37 guntas of lands to the builders. The builders are in possession of practically of 72 Acres of land which they have covered, including the wetlands and have also raised boundary walls and other constructions. It will be obvious that area occupied would be nearly 12.47 guntas and not 3 Acres and 9 guntas as mentioned in the report. The committee has nowhere referred as to what action is required to be taken and what measures should be adopted to remedy this very serious wrong committed by the builders.

3. Catchment area and inter-connectivity of the lakes had just been mentioned in the report but without any comments and recommendations as to what steps are required to be taken and what is the extent of damage done by these builders to the ecology and environment, particularly the wetlands of the area in question.

		<p>4. The Report does not state categorically as to which of the conditions of the environmental clearance order have been complied with and which have not been complied with. It is completely silent on the consequences and remedial measures on that behalf.</p> <p>5. The report has vaguely stated that there should be compliance to the statutory regulations for health and sanitation. It was expected to inform the Tribunal as to the existing or proposed projects of STP/ETP as may be required with regard to their capacity, technology to be adopted, etc. The report is completely silent as to what is the point of discharge of sewage and other effluents from the project in question, what remedial measures are required to be taken for ensuring compliance of the law in that behalf, source of water for construction activity and otherwise and its utilization; whether the water will be recycled and to what extent, as it would be evident that the NOC which the Project Proponent has, is only for 18 flats. We are informed by the Committee members who are present, that the builder is expected to construct around 13.5 Lakh Sq. Mtrs. of area. Unfortunately this aspect did not receive the attention of the Committee members.</p> <p>6. There is no specific recommendation or observation made in relation to compliance to the conditions of the Environmental Clearance, particularly with regard to Buffer Zone and air pollution.</p>
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7. (a) It was expected from the Committee to inform the Tribunal as to the measures required to be taken under the sanctioned plans, the various NOCs and clearances granted in relation of air and water pollution and particularly in relation to sewage.

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

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

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

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

The Tribunal had very high expectations from the Committee constituted of such Senior Officers and who

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

Be that as it may, this is a fit case where the Hon'ble Expert Members of the Tribunal need to visit the site themselves. Having considered the various aspects of the case and to dispose of this matter expeditiously and in accordance with law, it is necessary that the Hon'ble Expert Members of the Tribunal themselves may visit the site and ensure that there should be meaningful interpretation of facts and the correct position as existing at the site should be placed before the Tribunal in regard to the directions of Tribunal.

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

happens to be falling in that class of cases.

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

- (a) All the Members of the High Powered Committee constituted vide our order dated 7th May, 2015 would be present at the site tomorrow i.e. 11th September, 2015 at 11:00 A.M.
- (b) Complete records by all concerned authorities shall be produced before that Committee.
- (c) Hon'ble Dr. D.K. Agrawal and Hon'ble Prof. A.R. Yousuf, Expert Members of the Tribunal, would be present and entire further proceedings would be taken in their presence. It shall be ensured that queries mentioned in this order are completely and fully answered.
- (d) We direct the State of Karnataka, all the concerned departments, authorities, Corporations to be present and fully co-operate with the High Powered Committee and to provide all assistance and help to the Hon'ble Expert Members and the Committee.

Let the report be submitted to the Tribunal.

List this matter for further directions on 5th October, 2015 on which date we would finally dispose of this case in accordance with law.

The Committee proceedings will continue day to day till conclude.

.....,CP
(Swatanter Kumar)

	,JM (U.D. Salvi)
	,EM (Dr. D.K. Agrawal)
	,EM (Prof. A.R. Yousuf)
	,EM (Ranjan Chatterjee)

