

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONAL BENCH

CHENNAI

Application No. 1 of 2015

&

M. A. No 169 of 2015 and M. A 150 of 2015

K. Savad

S/o Advocate K. Moideen Koya,

Advocate and Environmentalist

Regency building

Edodi, Vatakara P. O

Kozhikode District

Kerala 673101

...Applicant.

Vs

1. Ministry of Environment, Forest and Climate Change
Union of India
Through the Secretary
Paryavaran Bhavan
Aligunj, JorBagh Road
NewDelhi- 110003
2. Govt. of Kerala
Rep. by the Chief Secretary to Government
Govt. Secretariat
Thiruvananthapuram P. O
Kerala 695001
3. Department of Environment
Govt. of Kerala
Rep. by Secretary to Government (Environment Department)
Govt. of Kerala
Government Secretariat
Thiruvananthapuram P. O
Kerala 695001

4. Department of Forest
Govt. of Kerala
Rep. by Secretary to Government
(Forest Department)
Govt. Secretariat
Thiruvananthapuram P. O
Kerala 695001
5. The Principal Chief Conservator of Forest (Wild Life)&
Chief wild life Warden
Government of Kerala
Forest Head quarters
Vazhuthacaud
Thiruvananthapuram P. O
Kerala 695104
6. The Biodiversity Board
Rep. by Authorised officer
L-14, Jai Nagar
Medical College P. O
Thiruvananthapuram
Kerala 695011
7. Dep. of Local Self Government
Govt. of Kerala
Rep. by the Secretary to Government (Local Self Govt.)
Government Secretariat
Thiruvananthapuram
Kerala 695001
8. The District Collector
Kozhikode P.O
Calicut, Kozhikode Dist
Kerala 673020
9. The Chief Town Planner
Department of Urban and Country Planning
2nd floor, Swaraj Bhavan
Thiruvananthapuram P.O
Kerala 695003
10. The Regional Town Planner
Kozhikode P.O

West Hill, Calicut
Kozhikode Dist
Kerala 673005

11. The Secretary
Kodancheri Grama Panchayat P.O
Kodancheri, Kozhikode Dist
Kerala 673580
12. Markaz Knowledge City
Rep. by its Chairman
Kanthapuram A.P. Aboobacker Musliyar
Markazu Sakafathu Sunniya
Karanthur P.O
Kunnamangalam
Calicut (via) Kozhikode Dist
Kerala 673571
13. Calicut Land Mark Builders and Developers
(India) (Regd) Rep by its
Authirised Representative, Land Mark World, Acropolis
NH 17 Bypass, Iringallur, Guruvayoorappan College P.O
Kozhikode Dist
Kerala 673104
14. Mohammad Asharaf A. M
S/o. Mohammad Kunhi, Teacher, New Thuruthi House
Malankunnu, Bekal P.O
Hosdurg Taluk
Kasargod District
Kerala 671318
15. Muhammad Nisar
S/o. Hassan Koya, Driver
Puthan Purakkal House
Thiruvambady P.O
Ambalapuzha Taluk
Kerala 688002
16. Salahudheen
S/o. Marakkar, Teacher
Cherukadath Valappil House
Meppad P.O, Vythiri Taluk
Wayanad Dist

Kerala 673577

17. Hasif .P

S/o. Mammu, Business Man Sainabis (H)
Perumacherry Desom
P.O Kolanchry, Thaliparamba Taluk
Kannur District
Kerala 670601

....Respondents.

Counsel for Applicant

M/S K.V. Bashyam Chari, K. Noorudheen Musaliar,
Kalyan Kishen Singh & Silambarasan, Advocates

Counsel for Respondents

Mrs. Sangamithirai - Counsel for R1
Mrs. Suvitha - Counsel for R2 to R5, R7 to R10
Mrs. Vidyalakshmi - Counsel for R6
Mr. K. R. Harin - Counsel for R11
Mr. Martin Jayakumar - Counsel for R12
Mr. G. Sam Edwin Raj
Mr. G. Bhaskar - Counsel for R 13
M/S. A.V. Bharathy
and Shamsul Huada - Counsel for R 14 to R 17

QUORUM:

Hon'ble Justice Dr. P. Jyothimani (Judicial Member)

Hon'ble Prof. Dr. R. Nagendran (Expert Member)

ORDER

**Delivered by Hon'ble Justice Dr. P. Jyothimani (Judicial Member) dated
31 August 2015**

- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
2) Whether the judgement is to be published in the All India NGT Report ----- yes / no

1. The applicant who is stated to be an environmentalist and ecology protectionist has filed this application as one of the efforts taken by him to expose the deliberate violators of environment and ecology of the tropical forests and forest lands in Western Ghats declared as a Biodiversity hot spot by the International Union for Conservation of Nature and Natural Resources (I.U.C.N). According to him, the lands comprised in R. S. No. 15/1 of Kodancheri Desom of Kodancheri Village, Kozhikode, Kerala including the lands falling within Nellipoyil Village, referred to as Pristine Land are within the purview of Ecologically Fragile Land (EFL) as per the reports of Prof. Madhav Gadgil and Dr. Kasthuri Rangan Committees submitted to the Government of India and the same was notified on 13-11-2013. This was also notified under the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 wherein the construction activities over the land area exceeding 20,000 sq. m require prior Environment Clearance of the first respondent as per clause 8 (a) of the Schedule to EIA Notification 2006. The High Level Working Group has also laid down guidelines that in respect of the lands situated in Ecologically Fragile Land (EFL), no clearance shall be given for any developmental activities without scrutiny of Environment Impact Assessment, no sanction for construction of any building activities in the extent exceeding 20,000 sq. m shall be granted either for township or developmental works unless prior EC is obtained as per EIA Notification 2006 and the MoEF & CC shall supervise the projects to prevent damage to ecology and environment.
2. The Kerala Biodiversity Board has also placed Kodancheri and Nellipoyil Villages among others in Kozhikode District as Ecologically Sensitive Areas (ESA). While so, according to the applicant, the 12th respondent, Markaz Knowledge City, has announced various projects for which foundation stones were laid by the Hon'ble

Ministers and Opposition leader in Kerala and the projects announced include Cybo land, Thoba Residential Garden, Unani Medical College, Special School, Institute of Management, Global School and Engineering Students Hostel. The foundation stone laying ceremony was presided over by Kanathpuram Aboobacker Musliyar , the 12th Respondent. It is stated that the first phase of the project and the release of the Master Plan was inaugurated by the Chief Minister of Kerala on 13th June 2013 at Puthupadi in Kodancheri Panchayat, Kozhikode Taluk and according to the applicant, construction is undertaken for and on behalf 12th respondent. This information is obtained by the applicant through public media and website. As per the website information, the 12th respondent's project will be spread over 110276.838 sq. m (27.25 acres) out of 125 acres of land stated to have been owned and possessed by the 12th respondent in the names of its various benamis. The Project, according to the applicant, is proceeded without obtaining prior EC form the 1st respondent. It is the case of the applicant that respondent No 14 to 17 are benamis of 12th respondent in whose name the construction activities are carried out which are opposed to EIA Notification 2006 and the subsequent Notification issued by MoEF and CC. Therefore according to applicant, the 12th respondent has colluded and conspired with respondent No 14 to 17 for violating the Notification in creating environmental imbalance in the Ecologically Fragile Lands in the Kodancheri Village. The application for approval of building permit filed by respondent Nos. 14 to 17 has been recommended by the statutory authorities namely Respondent No. 10 and 11. As the lay out for construction in the extent of 27.25 acres which is beyond 20,000 sq. m requires a prior EC , the planning permission issued by 10th and 11th respondents for respondent Nos. 14 to 17 without prior EC from MoEF & CC are illegal.

3. It is the case of the applicant that the 10th respondent in the letter addressed to 11th respondent dated 11-09-2014 has clearly admitted that the total extent of construction activities is 27.25 acres which is 110276. 838 sq. m. According to the applicant, the 12th respondent has already constructed in the area of 16699.32 sq. m which includes a dormitory in the ground, 1st and 2nd floors and first block of Unani Medical College which has been inaugurated on 19-12-2014. It is the further case of applicant that the said Ecologically Fragile Land on the Ecologically Sensitive Area, there are valuable flora and fauna and area shares its border with reserve forest situated at the foot hills of the Western Ghats and they are the dwelling habitat of wild animals, rare birds, rare species of amphibians, reptiles, insects etc. There are wild animals Like Cheeta, Indian Gazelle, Leopard, Macaque, Fishing Cat, Four horned antelope, Indian Bison, Gold cat, Elephants, Tiger, Wild Buffalo, Sambar etc., which are schedule 1 animals. That apart, there are schedule 1 birds and reptiles like Peacock and Pythons, Owl, Wild Chicken, Wild Dogs, Common Fox etc., The proposed construction by 12th respondent in collusion with respondent Nos. 10 and 11 will endanger the living creatures. The applicant has also referred to the National Forest Policy, 1988 which prohibits schemes and projects which interfere with forest etc. The area is also stated to be adjacent to Wayanad Wild Life Sanctuary and the noise pollution which will be caused by the project will affect the entire area. As the area is adjacent to the reserved forest the animals and birds which may escape may be haunted and killed. The applicant has also stated that as per advertisement in the print media, the 12th respondent is proposing to develop a large extent of 125 acres of land starting with the present 27.25 acres at first. He also refers to an advertisement issued by the 12th respondent in a Malayalam Daily owned by the 12th respondent which shows the extent of work being undertaken by the 12th respondent in the area. The applicant is

stated to have sent legal notices on 18-12-2014 and 23-12-2014 and in spite of it the work is in progress and therefore he has approached this Tribunal by filing the present application praying for a declaration that the building permit recommendations/ approvals to the Pristine Land situated in Survey No. 15/2 Kodancheri Desom of Kodancheri Village issued by the 10th and 11th respondents to 14th to 17th the respondents as void, for a direction against respondent Nos. 12 to 17 to jointly and severally restore the ecology of the Pristine land, to direct the respondent authorities to take legal action against respondent Nos. 12 to 17 for putting up construction in Pristine land in R. S. No. 15/2 without obtaining prior EC and consequently to direct to respondent Nos. 1 to 4 to include the land located in R.S. No.15/2, in Wayanad Wild Life Sanctuary under the provisions of Wildlife Act 1972.

4. The applicant has raised the legal grounds that the conduct of respondent No. 10 and 11 in granting permit to respondent Nos. 12 to 17 is against EIA Notification, 2006 and is in violation of the recommendations of Dr. Madhav Gadgil and Dr. Kasthuri Rangan Committees. The challenge is also on the ground that as the said villages of Kodancheri and Nellipoyil are notified as Ecologically Fragile Lands, the compliance under EIA Notification 2006 and the subsequent Notification of 2013, prior EC is mandatory and therefore the said respondents are not entitled to proceed with the construction. It is also the case of applicant that respondent Nos. 14 to 17 should have done Environment Impact Assessment and without such activity the respondent 10 and respondent 11 ought to have rejected the proposal for construction. It is also stated that the activities like Medical College, Super Speciality Hospital will generate waste and nothing is stated about the lawful disposal of the same. It is the further ground of the applicant that as the new proposed township is going to be put up in the extent exceeding 20,000 sq. m and that the project is within 10 km of the

Ecologically Sensitive Area, the 10th and 11th respondents have no jurisdiction to issue the planning permit. The permit issued by the said respondent Nos. 10 and 11 are against the precautionary principle and sustainable development contemplated under the National Green Tribunal Act, 2010 and the respondents are liable under polluter pays principle.

5. The applicant in the main application has also prayed for an interim prayer to stay the construction activities carried on by 12th respondent through respondent Nos. 13 to 17 in the Pristine land located in R.S. No 15/2 Kodancheri Village owned by respondent Nos. 14 to 17 and also for a direction against the official respondents to stop all process of grant of approval for building construction and also to appoint a commission of Environment experts to assess the damage caused due to construction activities. This Tribunal by an order dated 7th Jan 2015 has restrained the 12th respondent or anyone acting on behalf of 12th respondent from making any construction in the disputed area. Respondent Nos. 14 to 17 have filed M. A. No 28 of 2015 to vacate the said order stating that 27. 25 acres of land are private lands and proposed construction is only in an extent of 16699.32 sq. m and therefore EIA Notification is not attracted apart from stating that it is for establishment of educational institution. After hearing all the parties, this Tribunal in its order dated 21-04-2015, while dismissing M. A. No. 28 of 2015 filed by respondent Nos. 14 to 17, in so far as it relates to said respondents are concerned as it requires a detail hearing has taken note of the statement made by respondent 12 and 13 that respondent 12 is only a concept and respondent 13 is a builder and the respondents are not erecting any building in extent of 27.25 acres belonging to respondent Nos. 14 to 17, has vacated the interim order passed against respondent 12 and respondent 13 making it clear that at a later point of time if it is found that the said respondents are actually involved in

construction in the area concerned it will be open to the applicant to file fresh application. Further, as more particulars were required, the Tribunal also directed the MoEF & CC to file a detailed affidavit on the status regarding the approval and issuance of final Notification declaring Ecological Sensitive Areas in the Western Ghats. In that regard the State Government of Kerala was directed to furnish all particulars required in the letter from Government of India dated 20th October 2014 within two weeks and thereafter the MoEF & CC to issue final Notification within 12 weeks and notify the same in accordance with law.

6. It is in furtherance to the said direction, the 3rd respondent namely Department of Environment, Government of Kerala has filed M.A. No. 133 of 2015 on 2nd May 2015 seeking grant of extension of time by 6 months from 04-05-2015 for compliance of direction regarding the final Notification of ESA stating that the MoEF & CC after receiving the final recommendation of the expert committee along with the cadastral maps of all 123 villages stating that as per the draft Notification the ESA in Kerala is 9993.7 sq. m which includes 9107 Sq. m of forest area and 886.7 sq. m of non forest area and the Government of India requested for the boundary demarcation of 123 villages recommended for Notification and the same requires some time. Therefore as on date, the final Notification declaring Ecological Sensitive Area (ESA) in Kerala has not yet been completed which is an admitted fact.

7. The 1st respondent MoEF & CC in its reply dated 24th July 2015 has stated that the total area of construction in 27.25 acres of land is only 16699.32 sq. m consisting of two separate buildings, a cultural centre and a dormitory. It is also stated that the prior approval of EC from MoEF & CC is required only when the proposed construction is of single stretch having a plinth area of more than 20,000 sq. m or group of buildings having 1,50,000 sq. m and above and therefore according to said respondent

there is no violation of EIA Notification and prior EC is not required. A reference has also been made to Clause 8(a) and 8 (b) of the schedule to the EIA Notification of 2006 which speaks about the building and township and area development, respectively which also as stated by the 1st respondent is covered under the category B project and if the construction of building is above 20,000 sq. m and below 150,000 sq. m of built up area it requires a clearance from the State Environment Impact Assessment Authority (SEIAA) and the same has to be obtained after the state Level Expert Appraisal Committee (SEAC) makes appraisal. The 1st respondent has also given the particulars obtained from the Regional Office of the Ministry regarding the actual extent of construction. It is stated that the project consists of a special residence (dormitory) of 2138 .18 sq. m which is nearly completed, Law College in 2147.18 sq. m, in respect of which foundation work has just started, International School in the extent of 7691.66 sq. m and Cultural Centre in 4271.83 sq. m. By adding the internal road length, the proposed construction area is stated to be an extent of 16699.32 sq. m. The inspection report filed also confirms to the above said facts. However, in addition it states that the project is located in a village listed in the draft Notification dated 10-3-2014 connected with declaration on ESA and final decision is pending with Government of India for want of particulars. The report also states that as the project area is located in a hilly terrain, the drainage of the area is an important aspect to be looked into apart from the solid waste generated and their disposal which are to be taken care of as per law as it may affect the downstream area.

8. The 3rd respondent in the reply filed on 19-03-2015 has stated that in so far as it relates to the declaration of Ecologically Sensitive Area (ESA) the Government of India has accepted the recommendation of the High Level Working Group chaired by Dr. Kasthuri Rangan regarding the conservation of natural area of Western Ghats and

a draft Notification was published by MoEF& CC on 10-03-2014 as per Section. 3 of the Environment (Protection) Act, 1986 read with Rule 5(3) of Environment (Protection) Rule, 1986. It is stated that the Expert Committee constituted by the State Government as stated above has identified an area of 9993.7 sq. km which includes 9107sq. km of forest area and 886.7 sq. km of non forest area. It is also stated that the recommendation includes Kodancheri Village in Kozhikode District and as per the draft Notification in the ESA areas the following activities are prohibited namely:-

- a. Mining, Quarrying and Sand mining
 - b. Thermal Plants
 - c. Building and Construction Projects of 20,000 sq. m area and above
 - d. Township and Area Development Project with an area of 50 hectares and above and / or with built up area of 1,50,000 sq. m and above
 - e. Red category industries
9. It is stated that Ecologically Fragile Land (EFL) is a statutory categorisation as per State law namely Kerala Forests (Vesting and Management of Ecologically Fragile Land) Act, 2003. On the other hand, the Ecological Sensitive Area (ESA) is a declaration issued by MoEF & CC under the Environment (Protection) Act, 1986. As per the report of the Land Survey Department, out of 6794.58 acres of land in S. No. 15/1 Kodancheri Village, 160.8 acres is EFL. It is also stated by the 3rd respondent that as per the building permit issued by the Secretary to Kodancheri Grama panchayat, sanction has been granted for construction of 16699.32 sq. m and as per the report of the Regional Town Planner, the proposed construction includes building for Higher Secondary School, Law College, Cultural Centre and Dormitory. It is stated that if the plinth area is in the extent of 27.25 acres of land is less than 20000 sq. m, it makes no sense whether it forms part of larger area. It is however stated that

if massive construction as published by the 12th respondent is true, it requires prior EC and if ultimately the location falls within ESA of Kodancheri Village to be finally notified, the major township and building construction would attract the existing prohibition. However, the proposed construction is only 16699.32 sq. m. It is stated that if the activities are detrimental to the wildlife in the forest, the Forest Range Officer is bound to take legal action. It is also stated that the educational institutions are not red category ones. It is also categorically stated that ESA Notification is only in draft stage and MoEF & CC is yet to declare the final Notification. It is also stated that the custodian of the Ecologically Fragile Land, the Principal Chief Conservator of Forests, Kerala has reported that land where construction is proposed is not Ecologically Fragile Land (EFL) as per their record and during inspection of the site it was found to be not qualifying as EFL. It is also stated that the Chairman of Kerala State Biodiversity Board who was also the Chairman of Expert Committee has stated that the land where the construction is going on is not included in ESA as per the report of Dr. Oommen. V. Oommen Committee and that the land has been excluded while furnishing report to Government of India dated 25-02-2015.

10. The 6th respondent, the Kerala State Biodiversity represented by its Chairman Dr. Oommen.V. Oommen in the reply dated 18th March 2015 while admitting that the Western Ghats with its tropical forest is a biodiversity hotspot and needs to be protected, has reiterated the statement made by the 3rd respondent regarding the ESA Notification. He has also stated that EFL is different from ESA and that even as per the draft ESA buildings with plinth area of 20,000 sq. m and above and township with area of 50 hectares and above with built up area of 1,50,000 sq. m alone are prohibited and in this case respondent Nos. 14 to 17 have applied for construction of 16699.32 sq. m in an area of 27.25 acres and therefore no prior EC is required even as

per the EIA Notification of 2006. It is also stated that no construction activity is noticed in the areas adjacent to forest under Thamarassery Forest Range. It is also denied that application has been made for construction in 1,10,276.838 sq. m. It is also stated by 6th respondent that Kodancheri, Kozhicode has an area of 102.589 sq. km with a population of 32996 (16663 males and 16333 females) and the density of population is 322/ sq. km, whereas for ESA the population density has been taken less than 100 per sq. km. Therefore, to declare this densely populated area as wild life sanctuary does not make any sense.

11. The 9th respondent, the Chief Town Planner in the reply affidavit filed dated 13-03-2015, while reiterating that application was received from respondent Nos. 14 to 17 for construction of Cultural Building, Law College Building, Dormitory building and Higher Secondary School Building with the total area of 16699.32 sq. m in R.S. No. 15/1 Kodancheri Village and the same was forwarded by the 11th respondent on 26-05-2015 to the 10th respondent who in his turn has forwarded the application for remark to the 9th respondent. It is ultimately the 11th respondent who has the authority to issue building permit and the 9th respondent issues approved layout and usage of plots.
12. The 11th respondent Secretary of Kodancheri Grama Panchayat in the affidavit dated 13th March 2015 has stated that the said respondent has received an application for building permission from C. Mohammad, Asharaf. A. M and Mohmmad Nizar on 7-05-2013 for construction of a dormitory with the built up area of 566.51 sq. m. As per the possession certificate issued by Kodencheri Village Officer dated 26-12-2012 based on the registered document, 14 acres 75 cents of land in R.S. No 15/1 Kodancheri Village is under joint ownership of respondent Nos. 14 and 15 and is classified as Thottam in the revenue records and therefore the proposed activity is

permitted in law. After due consideration, the 11th respondent has given permit for construction of dormitory as per building permit 45/ 13-14 dated 26-07-2013 and it is understood that construction of dormitory is on the verge of completion. In the meantime, a revised application dated 23-04-2013 was received by 11th respondent for construction of a Law College, Cultural Centre and Higher Secondary School in addition to the dormitory owned by respondent Nos. 14 to 17 in the total built up area of 8718.97 sq. m with a plinth area of 16699.32 sq. m. While, 14 acres and 75 cents are owned by respondent Nos. 14 and 15 as per the registered documents, 12 acres and 50 cents in R.S. No. 15/1 are under joint ownership and possession of respondent No.16 and respondent No. 17 and as per revenue records the said land is classified as unoccupied dry and therefore the 11th respondent stated that the construction activity, as per revised application is permissible in law. As the revised proposal involves a layout which has to be approved only by the 9th respondent, the Chief Town Planner, the plan together with the report of the Assistant Engineer has been forwarded to the office of the 10th respondent for obtaining approval from the 9th respondent which is awaited. When once such plan is approved by the 9th respondent, the revised proposal for Law College, Cultural Centre and Higher Secondary School will be processed for building permission. This being the factual position, 11th respondent denied all other allegations and stated that the Panchayat has acted as per the Panchayat Act and Building Rules. It is reiterated that as per the revenue classification, the said total land to the extent of 27.25 acres are classified as Thottam and Unoccupied Dry and development and construction activities are permissible. It is also stated that the said extent of 27.25 acres belonging to respondent No. 14 to 17 are situated on the western side 3 km away from Forest cover. It is also stated that the lands are not classified as EFL and therefore, according to the 11th respondent, the applicant has mischievously

twisted the facts while approaching the Tribunal. It is also denied that the said land is wet land. It is also stated that if any person is aggrieved by the building permit granted to respondent 14 to 16, there are provisions for appeal and revision under Panchayat Rule and bypassing the alternate remedy the applicant with suppression of material facts has approached the Tribunal and therefore, according to 11th respondent the application is liable to be dismissed. A stop memo has been issued to respondent No 14 to 17 after the interim order was passed and at present there are no construction activities in the disputed land.

13. The 12th respondent Markaz Knowledge City in the reply while denying all the allegations raised in the application, has stated that the said respondent is a religious Scholar and a Philanthropist and he is an elected General Secretary of Islamic Educational Board of India which is in forefront in publishing the educational books as per the syllabus of Muslim education all over India in 8 languages. He is also an elected Chairman of Supreme Sunni organisation of Kerala and he is also occupying the position of Kazi of several districts of Kerala State and an eminent Scholar in Quran. He has stated that Markazu Saqafathi Sunniya is a charitable society founded by him in the year 1978 running many educational institutions including technical and professional colleges all over India with students from various streams and the institution is spread over Kerala, Tamil Nadu, Bombay, West Bengal, Assam etc. According to the said respondent, the applicant has come with unclean hands and as per the record, respondent 14 and respondent 15 who are the owners and in possession of 5.9693 hectares in R. S. No. 15/1 have obtained building permit to construct a dormitory having area of 990.68 sq. m in ground and 1st floor and construction was started in 2013 and the present application been filed beyond the period of limitation of 6 months and condonable period of 60 days and therefore is not maintainable in

law. The 12th respondent has also stated as he has been lending his leadership to various persons independently and he has also enthused respondent Nos. 14 to 17 to develop education centre and cultural centre. As the name Markaz is well received in public, he has agreed to lend his name to the said new venture and according to 12th respondent Markaz Knowledge City is only a concept as Markaz is well known in the field of education in Kodancheri Panchayat within which Kodancheri Village is situated having 108.58 sq. m area with a population of 40000.

14. The said respondent understands from the record that construction in the 27.25 acres is only 16699. 32 sq. m which does not require prior EC from MoEF & CC. It is also denied that R. S. No.15 /1 is a Ecologically Fragile Land. It is stated that in so far as it relates to the advertisement issued on behalf of 12th respondent, it does not depict anything about 27.25 acres belonging to respondent No. 14 to 17. It is also denied that respondent Nos.14 to 17 are benamis of respondent 12. It is also denied that construction is in the extent of 125 acres and such publication has never been issued by the 12th respondent. The filing of the application as well as the Interim Order has caused huge monetary loss to 12th respondent impinging on his reputation.

15. The 13th respondent who is arrayed as a developer on behalf of the 12th respondent in the reply, while stating that the filing of application is an abuse of law due to personal animosity and vested interest against the Chairman of 12th respondent, has stated that the 13th respondent is only an estate developer engaged in the construction of building and not a benami of any one. According to said respondent, the 12th respondent is not a living person or society or company having legal person against whom no legal proceeding can be filed and the 12th respondent is a nonexistent body. Markaz Knowledge City is the name of the project under which different activities of independent and joint entities are directed under the leadership of Mr. A. P.

Aboobacker Musliyar. The respondent has explained the contrary stands taken by the applicant regarding R. S. No. 15/1 for which respondent Nos. 14 to 17 have obtained permit and the said R.S number is having an extent of 6775.95 acres. In respect of 27.25 acres belonging to respondents No. 14 to 17, the 13th respondent is not putting up any building at all as a builder. The applicant cannot infer as if 13th respondent has entered into any development agreement in respect of 27.25 acres and implead him as a party only to affect its reputation as a builder. While reiterating that this area of 27.25 acres is not covered under EFL, it is stated by the 13th respondent that as per the State Act, if it is an EFL, the land will automatically vest with the Government. Whereas the private Property of respondent Nos. 14 to 17 which are confirmed as per the revenue records are in possession of the said respondents. The conduct of the applicant in not even giving the boundary of 27.25 acres only shows the mischievous intention. With the above averments the 13th respondent has prayed for the dismissal of the application.

16. The reply filed by respondent Nos. 14 to 17 states that the application is not maintainable and the same has been filed with unclean hands by suppressing material facts and beyond the period of limitation prescribed under Section 16 of NGT Act, 2010. It is stated that respondent Nos. 14 & 15 are the owners of 596.93 ares of land in R. S. No. 15/1 as per the sale deed dated 01-05-2012 and have obtained permission from the Kodancheri Grama Panchayat to construct a dormitory with ground and 1st floor on 06-07-2013 and construction was started in that year itself. The cause of action has started in 2013, and therefore the application is filed beyond the period of limitation. It is also stated that the respondent Nos. 16 and 17 are jointly holding 505.88 ares of land in R.S. No 15/1 as per the sale deed dated 23-3-2012 and the properties got mutated in the name respondents who are paying land tax regularly and

they are in enjoyment and possession of the said property. It is also stated that the area of 27.25 acres does not have any boundary near forest or to EFL. The 14 and 15th respondents have obtained permission for dormitory and respondent 14 to 17 have subsequently applied for putting up educational institutions for providing educational facilities for the people in the area which is backward having a population of nearly 40,000. It is stated that with the permission of 12th respondent they have decided to use the name of Markaz which is a concept and they are not benamis of the 12th respondent. The total built up area as per the revised proposal is only 16699.32 sq. m and the town planning authority is to approve the layout as well as plan and there is no necessity for obtaining any prior EC from MoEF & CC. The said respondents have stated that in obtaining planning permit there are no violation of any law. It is also denied that R. S. No. 15/1 is EFL and the applicant should produce necessary proof to that effect especially when the authority under the Act has clarified under RTI Act that the said area is not classified or declared as EFL. It is also stated that as far as ESA, the Government of India has not issued any final Notification and in fact the Chairman of Expert Committee on physical verification has recommended that the said R. S. No. involved in this case is to be excluded from ESA even though the same is stated in the draft Notification and in the map of Kodancheri Village as forming part of ESA. It is stated by the said respondents that even as pre the Notification of MoEF& CC issued in 2013 which deals with ESA, prior EC is required only if the construction area exceeds 20,000 sq. m. It is also stated that as per the permission issued by the 11th respondent Panchayat, the dormitory work is in finishing stage and no other work is carried out. Therefore, the recommendation of respondent 9 for approval is in accordance with Kerala Panchayat Rule 2011. The legal grounds raised

by the applicant in the above terms are denied and the said respondents have prayed for dismissal of the application.

17. M. A. No. 169 of 2015, M.A. 150 of 2015.

As it was stated earlier, the original order of injunction dated 7th Jan 2015 which was granted against respondent No 12 and 13 came to be modified by the subsequent order dated 21-04-2015 by which the order of injunction passed against respondent No 12 and 13 came to be vacated stating that if at a later point of time it is proved that the said respondents are actually involved in construction in the area concerned, it will be always open to the applicant to file fresh application. Alleging that the applicant has got evidence now to show that the 12th respondent is a registered trust and not merely an idea or concept and therefore there was a deliberate suppression of material facts by the 12th respondent, the original applicant has filed M. A. No. 150 of 2015 for stay of construction activities carried on by 12th respondent either directly or through respondent Nos. 14 to 17 in pristine land located in R. S. No. 15/1 Kodancheri Village and also M. A. No. 169 of 2015 for taking cognizance of offence against the 12th respondent for making false statement and take action for perjury. It is now stated that 12th respondent is a registered trust and not merely an idea and that fact has been deliberately suppressed by the Chairman of 12th respondent Kanthapuram A. P. Aboobacker Musliyar and therefore he is liable for perjury and that the order of stay against the 12th respondent has to be restored.

18. Mr. K.V. Bashyam Chari, the learned Counsel appearing for the applicant would submit that in the application for permit to put up the construction, respondent No 14 to 17 dated 23-04-2015, the said respondents have made it very clear that the extent of

place where the construction is going to be put up is 27.25 acres. When that is the clear proposal by the said respondents there is no necessity for anyone to apprehend that the construction is going to be in a lesser area namely less than 20,000 sq. m. He would also rely upon a reply obtained under the Right to Information Act, 2005 from the office of the Range Officer, Thamarassery Forest Range, who has replied that R. S. No. 15/1, Edathara is Ecologically Fragile Land and there are wild animals like elephant, wild pig etc., The Government of India issued Notification in the form of directions dated 13-11-2013 in the Annexure A including Kodancheri and Nellippoyil villages as identified ESA and therefore according to him prior EC is a condition precedent for the project, which has not been obtained. His alternate submission is that even assuming otherwise, the proposal for construction in 16699.32 sq. m in the area of 27.25 acres is only a ruse device to get over the EIA Notification 2006 and in this way if in the entire area of 125 acres people are permitted to put up buildings in areas less than 20,000 sq. m, the cluster will cause environmental havoc. He has also submitted that 3rd and 4th respondents have never approved cutting of any trees. Further, the 8th respondent, District Collector has also not permitted excavation of mountain land for laying roads. The 9th respondent being the custodian of layout must have taken note of these aspects. Therefore, he submits that this being an Ecologically Fragile Land (EFL) and Ecologically Sensitive Area (ESA), utmost care should have been taken by the authorities before granting such planning permit. He submits that issuance of planning permit should be taken in conjuncture with the EIA Notification. Therefore he has elicited the following points:-

1. Before obtaining the planning permit prior EC from MoEF& CC should have been obtained especially when the advertisement in

the news paper belonging to 12th respondent has clearly stated that they intend to develop 125 acres of land.

2. The directions issued by the MoEF& CC dated 13-11-2013 under Section. 5 of Environment (Protection) Act, 1986 makes it clear that the projects including the buildings and construction projects of 20,000 sq. m area and above which are forming part of ESA are to be prohibited and therefore the building permit issued by the 11th respondent is not valid in law.
3. It is not correct to state that only educational institutions are sought to be put up by respondent Nos. 14 to 17 but on the other hand in their own application they have stated that the area is for special residential purposes and assembly occupations.
4. The advertisement issued by 12th and 13th respondents clearly show that in Kodancheri village in S. No. 15/1 they propose to develop 125 acres of land and that cannot happen without prior EC from MoEF& CC.
5. In so far as it relates to point of limitation it is his contention that RTI information is given to the applicant on 9-10-2014 and the application has been filed on 5-01-2015 and therefore it is from the date knowledge, the limitation triggers.
6. Excavation of hilly lands are done without approval and there are no approval for Common Treatment Plant and therefore the question of environmental issue arise as a major issue in this case.

He would also submit that a registered trust deed of the 12th respondent as produced before the Tribunal *prima facie* shows that there has been deliberate suppression of

material facts and filing of false affidavit that the 12th respondent is not a legal person and the order of stay is to be restored against the 12th respondent.

19. *Per contra*, it is the contention of the learned counsel appearing for respondent No. 9 and 10 that being the authorities to sanction the layout plan they are not concerned about the individual plan approval which is the jurisdiction of the Panchayat. The question of lay out plan will arise if larger extent of construction activity is to be proposed and a plan is drawn periodically in which event the question of environment protection and protection of trees and green cover and preservation of hilly area will have to be taken into consideration.

20. It is the contention of the learned Counsel appearing for 11th respondent that the land to the extent of 27.25 acres are patta lands belonging to respondent Nos. 14 to 17 and out of that, building permission has been granted for putting up a dormitory in the ground and 1st floors in the extent of 990.68 sq. m and the permit given on 26-07-2013 valid up to 25-07-2016. When a fresh proposal was sent for development of 16699.32 sq. m for construction of Law College, Education institution etc., as it requires a layout approval, the matter has been sent to respondent No. 10 who has recommended the proposal which is pending for final decision before the 9th respondent. According to 11th respondent, the said lands are non forest dry and as per record they are not EFL and therefore there is no impediment on the part of Panchayat for granting building permit.

21. The learned counsel appearing for 12th respondent has submitted that the 12th respondent is only an idea hatched up by a philanthropist and the very application is filed due to the personal animosity. He has also made it very clear that the land in question is not EFL or ESA. He has also submitted that even if it is a registered trust, the object of the trust is only to promote the idea through various persons and

therefore it makes no difference. Therefore, according to him there is no deliberate suppression of any material facts for prosecution. He also submits that in as much as the 12th respondent is not involved in any construction activities there is no question of restoring stay order against it. This is all the more necessary when it is an admitted fact that 12th and 13th respondents are not involved in the project concerned which is that of respondent Nos.14 to 17.

22. Mr. G. Bhaskar, learned Counsel appearing for 13th respondent would submit that 13th respondent is a builder and in the absence of any allegation against it, the application has to be dismissed in *limine*. He would also submit that when respondent 12 is only an idea or concept, no petition can lie against it. He made it very clear that respondent 13 is not the builder for respondent Nos. 14 to 17 in the project concerned at all. In such circumstance, there is no question of imputing the said respondent as a benami of the 12th respondent. According to him, the intention of the applicant is only to damage the reputation of respondent 13, the builder. Even otherwise, he has contended that the applicant has chosen to file the application against the total extent of land 27.25 acres without even indicating its boundaries. Moreover when the respondent Nos. 14 to 17 are proposing the project, there cannot be any stay against a concept. He would also submit that in so far as it relates to the allegation of cutting of trees, Kerala Preservation of Trees Act, 1986 enables certain trees to be cut and certain trees are prohibited from being cut. Even otherwise there are remedies available under the State Act.

23. Mr. A. RL. Sundaresan, learned Senior Counsel appearing for respondent Nos. 14 to 17 would submit that 27.25 acres of land is a private property and not vested with the Government of Kerala. The building permit has been granted by 11th respondent for dormitory in R. S. No. 15/1 in total extent of 990.68 sq. m which include the ground

floor 566.51 sq. m and first floor 424.17 sq m. He has submitted that when the entire extent of 27.25 acres is owned by respondent Nos.14 to 17 as per the sale deed and therefore they are private properties and are not vested with Government since they are not Ecologically Fragile Lands, there is no question of any prohibition from granting planning permit if it is less than 20,000 sq. m. He also submits that in as much as it is clear that the final Notification of ESA has not been completed by the MoEF& CC, and in the light of the categorical stand by the Biodiversity Board that the land in question is not ESA, there is no question of any restriction to respondent Nos.14 to 17 in getting planning permit. He submits that even if it is covered under ESA, the Government of India Notification is very clear that the building proposal which are above 20,000 sq. m are prohibited and are not permitted except with prior EC and if it is below 20,000 sq. m there is no requirement of EC at all. He has made it clear that as far as the present extent of 16699.32 sq. m, neither the 12th respondent nor the 13th respondent is involved and 13th respondent will not be involved in respect of the project which will be less than 20,000 sq. m. He has also taken us to the relevant provisions of Kerala Private Forests (Vesting and Assignment) act, 1971 to substantiate his contention that the lands are never vested with the Government and are still the private lands. He also submits that a wrong picture has been given as if the Wayanad Wild Life Sanctuary is situated adjacent. He also brought to the notice of the Tribunal that to declare the land as EFL is the powers and jurisdiction of the State Government under the State Act namely Kerala Forests (Vesting And Management Of Ecologically Fragile Lands) Act, 2003.

24. We have heard the learned Counsel appearing for the applicant as well as respondents elaborately, perused the entire pleadings and documents filed by all the parties and

given our anxious thought to the issue involved in this case. After perusal of the same the following issues arise for consideration to arrive at an appropriate conclusion:

1. Whether the applicant is entitled for the relief of declaration that the building permit recommendation /approval in respect of R.S. No. 15/2, Kodancheri Desom, Kodancheri Village issued by respondent No. 11 to respondent Nos. 14 to 17 is void?
2. Whether the proposed construction by respondent Nos. 14 to 17 in R. S. No. 15/1 of Kodancheri Desom of Kodancheri Village in the extent of 16699.32 sq. m requires prior EC either under EIA Notification, 2006 or under the Notification of Government of India in the form of direction under section. 5 of Environment (Protection) Act, 1986 dated 13-11-2013 regarding ESA?
3. Whether the 12th respondent is liable for action for perjury in making deliberate suppression of material fact relating to its status?
4. What other directions are necessary on the facts of the case to protect the environment?

Since all the issues are interconnected, we propose to take all the issues together.

25. The applicant in the application has averred that the land in question in which the construction is sought to be put up as per the permit issued by the Panchayat, the 11th respondent, as contained in R. S. No. 15/2 Kodancheri Desom, Kodancheri Village. In the body of the application also he has chosen to mention the R. S number as 15/2 apart from the prayer. He has not filed any application for amendment of the main application regarding the R. S number. The original application was filed on 6th January 2015. However, in the compilation No. 1 in the form of paper book given by him received by the office of Tribunal on 23rd March 2015, he has chosen to change

the R. S number as 15/1 for reasons best known to him. In fact in Volume 2 filed along with the original application on 6th January 2015, he has chosen to include a copy of the application for permit dated 23-04-2014 filed to Kodancheri Panchayat by respondent Nos. 14 to 17. In column No. 4 of the application form the said respondents have stated the details of the property as R. S. No. 15/1. In spite of that, it is not known as to why he has chosen to mention throughout in the application the R. S number as 15/2 which has been subsequently, in our view unauthorisedly changed as 15/1 without seeking any permission for amendment. But the fact remains that even as on date the original application filed on 6th Jan 2015 contains R. S. No as 15/2. In the absence of any description of property on the application with boundaries we can only prudently conclude that applicant has confusion regarding the identity and survey number of the land.

26. Be that as it may, now that it is an undisputed fact the land which is the subject matter in question in this case is comprised in R .S. No. 15/1, we propose to deal with the case on fact taking into consideration that the correct R.S. No. is 15/1. The case of the applicant is that as per the advertisement issued by the 12th respondent, 110276.838 sq. m (125 acres) are going to be developed by construction without obtaining prior EC from MoEF& CC. To substantiate that, he relies upon a public notice issued by Markaz Knowledge City stating that they are launching a Knowledge City in Puthuppadi (Kodancheri Panchayat) on 30th June 2013. He also relies upon a website information that the 12th respondent is generating job opportunities by putting up a township at Kaithapoyil. However, in the copy of the application filed by respondent Nos. 14 to 17 seeking for building permit from the 11th respondent Panchayat dated 23-04-2014, the said respondents have stated that the revenue village of the place concerned as Kodancheri village in the extent of 27.25 acres in R. S. No. 15/1. On the

face of it we are unable to draw any connection between the advertisement published by 12th and 13th respondents and that of the application filed for building permit.

27. In column No. 7 of the said application, while stating about the plinth area of the proposed building, respondent Nos. 14 to 17 have stated as follows:-

- a. Special residential: plinth area: 2138.18 sq. m - Carpet area 1652.08 sq. m.
- b. Assembly occupancy: plinth area 4271.83 sq. m - Carpet area: 3352.66 sq. m.
- c. Education Law College: plinth area 2147.18 sq. m – Carpet area: 1651.85 sq. m.
- d. Higher Secondary School: Plinth area- 7691.66 sq. m - Carpet area 5998.26 sq. m.

The total plinth area for all the schemes come to around 16248.85 sq. m and carpet area 12654.85 sq. m. The applicants, who are respondents 14 to 17 have also stated in the reply filed in the main application that the total area of proposed construction is 16699.32 sq. m.

28. As per EC Regulation, 2006 (EIA Notification 2006) notified by the Government of India, in exercise of the powers conferred under Section. 3(2) (V) and Section. 3(1) of Environment (Protection) Act, 1986, read with the concerned rules, prior EC is required as per the schedule annexed therein in respect of building and Construction Projects / Township and Area Development Projects under project activity, Clause 8 as incorporated in the Notification issued by MoEF & CC dated 22nd December 2014 which is as follows:-

1	2	3	4	5
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8		Building/ construction projects/ Area Development projects and Townships	
8(a)	Building and Construction Projects	≥ 20000 sq. m and $< 1,50,000$ sq. m of built- up area #	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects	Covering an area ≥ 50 ha and or built up area $\geq 1,50,000$ sq. m ++	++ All projects under Item 8(b) shall be appraised as Category B1

A reading of the above said part of EIA Notification makes it clear that building with built-up area of construction projects which are beyond 1,50,000 sq. m up to 50 hectares are covered as Township and Area Development projects and any building construction project from 20,000 sq. m built -up area to 1,50,000 sq. m are considered as building and construction projects. All projects under 8 (b) are considered as B1 category which require prior EC from State Level Impact Assessment Authority after undergoing the public consultation process. Consequently building construction projects with a built-up area of less than 20000 sq. m do not require any prior EC from any authority under the EIA Notification, 2006. As the building permit which is stated to have been given for 990.68 sq. m for putting up a dormitory and the revised proposal is for putting up Law College, Secondary School and assembly occupancy

apart from special residential purpose totally to be built up in the extent of 16699.32 sq. m. It is on fact clear that permit has been given by 11th respondent only for dormitory in the extent of 990.68 sq. m of built up area and the project proposal for the remaining as stated above has been sent to the 10th respondent for approval of lay out. Even otherwise, the revised proposal is less than 20,000 sq. m. Therefore as per EIA Notification it is clear that it does not require any prior EC. The apprehension of the applicant that based on the advertisement of the 12th respondent, there is a possibility of any other individual promoters to put up construction in the extent less than 20,000 sq. m is not supported by any reliable records. The Tribunal as on date cannot go beyond the existing reality and anticipating anything in future no order can be passed. If such a situation arises in future it is not as if the Tribunal cannot exercise its jurisdiction in an appropriate manner and in any other case. In so far as it relates to the contention raised by the applicant that the area in question is covered as Ecologically Fragile Land, it is on record clear that the total extent of 27.25 acres of land which stands in the names of respondent Nos. 14 to 17 situated in Kodancheri Desom, Kodancheri Village in R. S. No. 15/1 stated as Thottam (pattom) are covered by various registered documents which are filed and the Village Officer has issued possession certificate in the names of the said respondents.

29. The Government of Kerala has enacted the Kerala Forests (Vesting and Management of Ecologically Fragile Lands) Act, 2003 which came into force from 08-06-2005 to provide for vesting in the Government, of Ecological Fragile Lands in the State of Kerala and for the management of such lands with a view to maintaining ecological balance and conserving the Biodiversity. The term EFL is defined under the Act as follows:-

It means:-

(i) any forest land or any portion thereof held by any person and lying contiguous to or encircled by a reserved forest or a vested forest or any other forest land owned by the Government and predominantly supporting natural vegetation, and (ii) any land declared to be an ecologically fragile land by the Government by Notification in the Gazette under section 4;

Under Section.3 of the Act, the EFL are transferred and vested in the Government and such vesting shall be notified in the Gazette by informing the owners in writing by the Custodian. That apart, the Government has the power to declare by Notification in the Official Gazette to identify lands which are ecologically fragile and on recommendation of the Advisory Committee such land is deemed to be a reserved forest under Section. 5 of the Act. The term Custodian is defined under section. 2(a) of the Act, means the Principal Chief Conservator of Forests of the State or any other officer not below the rank of a Conservator of Forests appointed by the Government, by Notification in the Gazette. There are other provisions under the Act for payment of compensation and vesting and settlement of disputes by the Tribunal both to decide as to whether the lands are vested as EFL or not and also the sufficiency of compensation.

30. Therefore, a perusal of the State Act makes it clear that the idea of the Act is not only to maintain ecological balance and conserve biodiversity but to achieve such goal to declare Ecologically Fragile Lands of private individuals on payment of compensation for enriching the forest cover and Biodiversity. Even though the vesting is automatic under the Act, the same is mandated to be notified in the gazette and sufficient notice given to the owners who are entitled to approach the Tribunal to contest that what was vested was not an EFL. For identifying and recommending to the Government the land as Ecologically Fragile Land, an Advisory Committee has been constituted with

the Principal Chief conservator of Forest as the Chairman and many other experts and people's representatives.

The Committee shall take into consideration,-

- (i) the abundance of flora and fauna;
- (ii) the rare and endemic flora and fauna;
- (iii) the role in conserving the water sources;
- (iv) functions as corridors connecting two or more wildlife habitats;
- (v) functions as breeding grounds for wildlife; and
- (vi) such other ecological parameters as may be prescribed; and make specific findings on the ecological sensitivity and significance of such land before making its recommendation to the Government under sub-section (3).

31. Applying the above said principle enunciated in the present case, there is absolutely nothing on record to show that the State Government has declared the land as EFL or any vesting as per the law has taken place. On the other hand, the Custodian under the Act namely, the Principal Chief Conservator of Forest in his letter dated 02-02-2015 referring to the present case has in clear terms stated as follows:-

“The land in question is not Ecologically Fragile land as per our records. Also during inspection of the sites it was not found to be qualifying as EFL.”

In view of the categorical stand of the Custodian, there is absolutely nothing for this Tribunal to decide anything contrary except holding that as on date the land which is the subject matter of this application is not an EFL.

32. This leads us to another question as to whether the land is an ESA. It is not in dispute that the reports of Dr. Madhav Gadgill and Dr. Kasthuri Rangan have included

Kodancheri Village as ESA by way of recommendation. It was based on the recommendation, the Government of India has issued a draft Notification and the process of issuing final Notification is in progress. In fact, the State Government has ascertained the extent of area for declaring as ESA while MoEF& CC requested further details as to the exact extent of land running through various villages. Therefore, unless and until a final declaration by way of a Notification is made by the MoEF& CC, there is no ESA finally declared as far as the Kerala State relating to the Western Ghats. However, considering the unprecedented threats to natural landscape of Western Ghats region by developmental projects and urban growth and in order to take urgent action for protection of biologically rich diverse and natural landscape of Western Ghats and by virtue of powers under Section. 5 of the Environment (Protection) Act 1986, the following activities are prohibited by way of directions issued by the Ministry dated 13-11-2013:-

The following category of new and/or expansion projects/activities shall be prohibited in ESA from the date of issue of these directions except those cases which have been received by EACs/MoEF or SEACs/SEIAAs before the date of putting HLWG report on the website of Ministry, i.e.,17-04-2013 and which are pending with EACs/MoEF or SEACs/SEIAAs. Such projects will be dealt under the guidelines and rules applicable at the time of application before the respective EACs/MoEF or SEACs/SEIAAs. Apart from such cases, no pending case or any fresh case shall be considered by the EACs/MoEF or SEACs/SEIAAs from the date of issue of these directions.

- a) Mining, Quarrying and Sand mining
- b) Thermal Plants
- c) Building and Construction Projects of 20,000sq. m area and above

d) Township and Area Development Project with an area of 50 hectares and above and / or with built up area of 1,50,000 sq. m and above

e) Red category industries.

33. Therefore, it is clear that even under the directions issued by MoEF & CC dated 13-11-2013 what is prohibited in ESA is building and construction projects of 20,000 sq. m area and above. But there is one letter of the District Collector dated 22-01-2015 referring to a communication of Tahsildar, Thamarasseri, wherein it is stated that it was convinced after physical verification of the land that the land in R. S. No. 15/1 in Kodancheri Village where the Markaz knowledge City proposed to construct is not included in the forest land and it is also found that the said land is situated in a non ESA zone. For the proper appreciation of the fact it is relevant to extract the contents of the said letter which is as follows:-

It was convinced after physical verification of the land that the land in R S No 15/1 of Kodancheri Village where the Markaz Knowledge City is proposed to be constructed is not in the Forest Land. It is also found that the said land situate in Non ESA Zone, after physical verification with the Compact Disk prepared and submitted by the Kerala State Remote Sensing and Environment Centre based on the ESA/ Non ESA sketch prepared by the Panchayat in the meeting called for by the Land Revenue Commissioners which was attended by the Additional District Magistrate and the District Survey Superintendent. The said record notes are final and it was instructed to the Village Officers to notify the same to the Land revenue Commissioner through the respective District Collectors if the said properties are at present inhabited by people. The Map of the Kodancheri Village as per the CD in which Markaz Knowledge

city is situate is produced herewith duly marked. If any other Government orders are existing at present, a reply can be given to the applicant after examining that also.

Therefore, looking into any angle, the applicant is not entitled to any relief of declaration that the land is situated either in EFL or ESA.

34. Now, coming to the contention regarding the allegation of perjury against 12th respondent, the 12th respondent has stated that it is a concept against which there cannot be any injunction. In the reply dated 4th March 2015, the 12th respondent has stated that it has enthused respondent Nos. 14 to 17 to set up educational institutions and cultural centres for the benefit of the local population of Kodancheri Village which is a rural backward area. It was stated that Markaz Knowledge City is only a concept known in the field of education and it is not a benamidar and the 12th respondent has requested respondent Nos. 14 to 17 to permit to associate itself for setting up of educational institutions in 27.25 acres of land. The legal status of the 12th respondent was not stated anywhere in the affidavit filed by it. Therefore, at the time when this Tribunal passed orders on 21- 04-2015, the legal status of 12th respondent was never considered as to whether it is a firm, trust or company but it was only considered as a concept. The applicant who has now filed the application for perjury has relied upon a registered trust dated 22-02-2014 to show that it as an identifiable person. On a reference to the said trust deed it is clear that its object is giving educational and medical relief to poor which also include the object to establish, maintain or grant aid for establishment, construction, repair or maintenance of house well, tube wells, water reservoirs, pathways, roads, bridges etc., for the use of general public and financial assistance to the unprivileged for seeking job and marriage. In our view there is no question of deliberate misrepresentation of material facts. Even if

the 12th respondent is a trust and identifiable in nature it can be denied to be a concept and a facilitator. In any event the status of the 12th respondent has never weighed in our mind while passing the order dated 24th April 2015 and there is no reason for this Tribunal to take any action against the 12th respondent.

35. As far as the 13th respondent is concerned in our view there is absolutely no reason for the applicant to implicate it even remotely. The said respondent is only a builder and a promoter and not owner of any land. Eventhough Mr. A. R. L. Sundaresan, learned Senior Counsel appearing respondent Nos. 14 to 17 has categorically made the statement across the bar that the 12th and 13th respondents are not associated with any of the building projects of the said respondents in 16699.32 sq. m and that the said respondents have no proposal for putting up any scheme beyond 20000 sq. m. In any event, as a professional person, the 12th respondent acts for consideration based on the expertise acquire by them either like a lawyer or a doctor. Even by showing its extraordinary skill in the development activity as a developer on behalf of the owner, the developer is not actually involved in the scheme or project of the owner. In such circumstances adding of 13th respondent as a party is totally misconceived.

36. Even though we have to necessarily arrive at a conclusion that respondent Nos. 14 to 17 in the present proposed scheme of construction in the extent of 16699.32 sq. m which is less than 20000 sq. m is not required to obtain prior EC as per the EIA Notification 2006, we are of the considered view that certain environmental safeguards are to be taken which are more of a guideline and directions to the State Pollution Control Board (SPCB). We are in fact informed that certain anti environmental activities are proposed to be done for making access to the project area. We also note that there are allegations of cutting of trees. If that is so, the PCB along with the authorities under the relevant Act for preservation of trees shall inspect the

spot and find out the real position. In the event of any trees illegally cut, the authorities concerned shall initiate immediate action in accordance with law which shall include afforestation in sufficient number and also restoration of damages which might have been caused to the hilly terrain. The authorities concerned in this regard shall do all things necessary expeditiously in order to avoid any further damage and also to restore the damage caused to the hilly terrain.

With the said direction the application stands dismissed in following terms:-

1. The applicant is not entitled for the relief claimed in the application. The application No. 1 of 2015 stands dismissed.
2. There is no bar for respondent Nos. 9 to 11 to issue permit for the project of respondent Nos. 14 to 17 for the scheme of construction in the extent of 16699.32 sq. m. However, the same shall be subject to the condition that SPCB shall ensure all necessary protections regarding the solid waste management in the scheme, effluent treatment plants and maintenance of the same periodically.
3. The 12th respondent is not liable for any action for suppression. Accordingly M. A. No. 169 of 2015 stands dismissed and consequently M. A. No. 150 of 2015 is also dismissed. Interim order granted against respondent 14 to 17 dated 21-04-2015 stands vacated, however subject to the conditions issued against the said respondents.

4. The 3rd respondent along with the SPCB shall inspect the spot and assess as to whether any trees have been cut in the site and damage caused to hillock while creating access and if so, pass appropriate orders of remediation which shall be effected by respondent Nos. 14 to 17 at their cost within a period of 4 weeks from the date of such assessment and such assessment shall be completed within two weeks from the date of receipt of a copy of this order and the 3rd respondent along with 8th respondent shall ensure the effective implementation of this order.

5. If the proposal is approved, respondent Nos. 14 to 17 shall ensure that no damage is caused to environment and no trees are cut in the area without following the due process of law.

There shall be no order as to cost.

Chennai

Dated: 31-08-2015

Justice Dr. P. Jyothimani (JM)

Prof. Dr. R. Nagendran (EM)