BEFORE THE NATIONAL GREEN TRIBUNAL,

SOUTHERN ZONE BENCH, CHENNAI.

APPLICATION NO.157 of 2014(SZ)

IN THE MATTER OF:

Dr. G. D. Martin
S/o. G. O. Devassykutty
Gopurathingal House
Angamaly South
Ernakulam District,
Kerala- 683573. ..... Applicant

Versus

1. The Union of India
   Represented by its Secretary
   Ministry of Environment and Forests
   CGO Complex, New Delhi

2. The State of Kerala
   Represented by its Principal Secretary
   Environment Department
   Thiruvananthapuram.

3. The State of Kerala
   Represented by its Secretary
   Agriculture department
   Thiruvananthapuram.

4. Choornikkara Grama Panchayat
   Represented by its Secretary
   Choornikkara,
   Aluva-683106.

5. The Local Level Monitoring Committee
   Choornikkara Grama Panchayat
   Represented by Agricultural Officer
   Krishi Bhavan, Choornikkara.

6. The State Level Monitoring Committee, Kerala
   Represented by the Agricultural Production Commissioner

Secretariat, Thiruvananthapuram,
Kerala.

7. The District Collector
Kakkanad, Cochin,
Kerala.

8. The Revenue Divisional Officer
Cochin-682001
Kerala.

9. The Kerala Pollution Control Board
Represented by its Member Secretary
Pattom P.O.,
Thiruvananthapuram-695004.

10. The Kochi Metro Rail Ltd
Represented by its Director
8th Floor, Revenue Tower, Park Avenue
Kochi - 682011, Kerala.

11. Kalamassery Municipality
Represented by its Commissioner
Kalamassery, Kerala.

12. The State Environment Impact Assessment Authority
Represented by its Member Secretary
Directorate of Environment and Climate Change
Pallimukku, Pettah P.O.,
Thiruvananthapuram-695024. .....Respondents

Counsel appearing for the Applicant: M/s.K.Chandrasekaran, Mr.C.E Unnikrishnan

Counsel appearing for the Respondents: M/s. Smt. Sumathi for Respondent No.1; Smt. A.S. Suvitha for Respondent Nos.2, 3, 6 to 8; Shri. M. Ajay and Smt. Rema Smrithi for Respondent No.9; Shri. Jayesh B. Dolia for Respondent No.10; Mr. Abubakkar for Respondent No. 11; Smt Vidyalakshmi for Respondent No.12.

ORDER

PRESENT:

1. **Hon'ble Justice M. Chockalingam**
Judicial Member

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

Dated, 4th February, 2016.

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

This application is filed by the Applicant who is stated to be a Public Spirited person concerned with the protection of environment, challenging the alleged illegal action of the 10th Respondent herein, Kochi Metro Rail Ltd. (KMRL) in reclaiming hundreds of acres of paddy land and wet land, situated under the geographical limits of the 4th and 11th Respondents, causing severe environmental damage.

2) The brief facts necessary for the disposal of the Application can be stated thus: The Applicant submits that the site in Choornikkara Village where the proposed construction of Metro Rail Yard and Maintenance Shed by the 10th Respondent, KMRL is situated is one of the most fertile lands in the State of Kerala. The 10th Respondent has begun filling up of these lands, measuring more than 300 acres of *Padasekaram* in *Chawarpadam* and *Katteppadam*, which are within geographical limits of 4th and 11th Respondents and has also filled in and destroyed irrigation and drainage canals in the area thus completely destroying the ecology giving rise to serious environmental impacts.

3) The Applicant states that the 10th Respondent failed to obtain permission from the Kerala Government under the Kerala Conservation of Paddy Land and Wetland Act, 2008 (Act of 2008) for the conversion of hundreds of paddy fields. The Applicant also submits that Section 3(1) of the Act of 2008 imposes an absolute prohibition on conversion of any paddy land by even the owner or

occupier of such land. The Act also envisages that the recommendations of the Local Level Monitoring Committee (LLMC) are to be considered by the State Level Monitoring Committee (SLMC), both Committees being constituted under this Act, for the grant of approval of any proposal for the conversion of paddy lands. The SLMC in turn is to furnish a report to the State Government for the grant of permission of such conversion. It is submitted by the Applicant that in the instant case, neither LLMC nor SLMC has recommended any conversion of land in favour of the 10th Respondent which can be clearly seen from the reply by the 5th and 6th Respondents furnished under the provisions of Right to Information Act, 2005. It is further submitted that the LLMC in their meetings dated 17.01.2012 and 26.09.2012 has observed that any filling of these lands in the *Chawarpadam* will result in destruction of streams and water bodies which in turn will result in flooding of that area and consequent damage to the existing irrigation and drainage system. But, when the 10th Respondent has applied seeking recommendation for the conversion of the lands before the LLMC, it was falsely stated that there will be no change in the nature of environment. It is further pointed out by the Applicant that no permission was granted by the Land Revenue Commissioner to the 10th Respondent for filling up of any paddy fields. The Applicant submits that he also made a representation to the District Collector and other competent authorities on 24.03.2014 exhorting them to take appropriate action against the illegal filling up of paddy fields resulting in environmental degradation but no action was taken.

4) It is further submitted by the Applicant that Rule 4(1) of the Wetland (Conservation and Management) Rules, 2010 (Wetland Rules, 2010) also prohibits the conversion or use of a wetland for any purpose. It is submitted that the filling in of the wetland has resulted in complete destruction of several

small streams and canals. *Vidakuzha Punjathode*, the major canal running through the *Padasekaram*, serving as an important source for irrigation has been reclaimed. A *thodu* which was 25 feet wide has been reduced to 12 feet and to as less as 5 feet in the midst of the area, which has been illegally filled in by the 10th Respondent. The action of the 10th Respondent by filling in of streams and the entire area which is classified as a wetland is contrary to the Wetland Rules, 2010.

5) It is further submitted by the Applicant that a total of 20.4928 ha of land only has been permitted for the conversion by the State Government *vide* an order dated 02.04.2012 with respect of 16.004 ha and *vide* order dated 01.01.2013 with respect of 4.400 ha. But, the 10th Respondent has proceeded to fill in more than 300 acres of land which is well beyond the permitted area in clear violation of the orders of the Government. The Applicant also submits that the 10th Respondent has itself stated in their website in Frequently Asked Questions section that only 15.9959 ha of land will be required whereas the Detailed Project Report (DPR) submitted for the project by the 10th Respondent at Chapter 5 Item 5.7.4 declares that 25 ha of land is required for the conversion. It is therefore submitted that contrary to this assertion and statement, several hundreds of acres have been converted by the 10th Respondent.

6) It is further submitted by the Applicant that the proposal by the 10th Respondent to establish 'Metro Village' within the geographical limits of 4th Respondent was not mooted as a part of any earlier proposal nor any mention of it can be seen in the DPR prepared and submitted. By converting more than 300 acres of land, 10th Respondent is abusing the present project as an excuse

to make the most of the situation by filling in and selling lands commercially thereby launching a real estate project.

7) The Applicant further states that the 10th Respondent has not obtained any Environmental Clearance (EC) nor undertaken any Environment Impact Assessment (EIA) study as mandated under EIA Notification, 2006 in respect of filling in of paddy fields. It is submitted that EC is mandatory for any construction beyond 20,000 Sq.Meters. The present project of 10th Respondent as stated in DPR involves a total area of 15.7970 ha which is equal to 130435.86816 Sq.Meters which is well beyond the permissible limits of 20,000 Sq.Meters and hence mandatory clearance under EIA Notification is required for the instant project. The 10th Respondent has not displayed any such grant of EC on their website. The grant of EC is not displayed on the website of 1st and 12th Respondents also despite the fact that such display is mandatory under the provisions of law. It is therefore submitted that the construction and maintenance of the Metro Rail Yard without prior EC is illegal and is punishable under law. It is further submitted that no assessment of impact on the land was done by the 10th Respondent as mandated by the law thus flouting the directions of the Hon'ble Supreme Court in the case of *Karnataka Industrial Area Development Board* v. *K. C. Kenchappa & Others,* (2006) 6 SCC 371 which states:

"in future before acquisition of lands for development, the consequences and adverse impact of development of environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment".

8) It is further submitted by the Applicant that the 10th Respondent has not obtained the Consent to Establish (CTE) from the 9th Respondent, Kerala State Pollution Control Board (Board) for setting up of the construction and

maintenance of Metro Rail Yard at Muttom, Choornikkara Village. Commencement of the construction activity, a fact admitted by the 10th Respondent itself, is thus a clear violation of Section 21(1) of Air (Prevention and Control of Pollution) Act, 1981(Air Act,1981) and Section 25(1) of Water (Prevention and Control of Pollution) Act, 1974 (Water Act,1974). It is submitted that under these statutory provisions of the law, it is clear that grant of CTE is mandatory prior to commencement of any construction activities. It is also submitted that the 10th Respondent has also constructed an illegal road by filling in paddy lands and wetlands at *Palaathipadam* in the geographical limits of 4th and 9th Respondents. Therefore, it is submitted by the Applicant that such illegal conduct by the 10th Respondent is in brazen violation of the law and in disregard of statutory provisions which are to be viewed seriously.

9) The 7th respondent's reply which is also adopted by Respondents 2, 3, 8 and 6 states that in connection with the KMRL project, an extent of 16.6004 ha of land in Muttom at Aluva West Village has been acquired for establishing the Metro Rail Maintenance Yard. As the land involved is a paddy field, sanction has been accorded by the State Government *vide* G.O (Ms.) No. 81/2012 dated 02.04.2012 for reclamation under Section 10 of the Act of 2008. In addition to this, for laying road in the Yard, an extent of land measuring 0.1351 ha and for shifting of High Tension Line, an extent of 0.3195 ha in Thrikkakara North Village, have also been acquired and reclamation order was issued in G.O (Ms.) No.242/2012 dated 18.10.2012 and *vide* G.O (Ms.)No. 01/2013 dated 01.01.2013. Further, 1.4124 ha and 3.0764 ha of land in Aluva West Village was also acquired for the shifting and making new roads near the Maintenance Yard and reclamation order was accorded *vide* G.O (Ms.) No. 01/2013 dated 01.01.2013 and *vide* G.O (Ms.) No.113/13 dated 08.04.2013 land measuring 0.6745 ha was also added. In all, a total of 22.2183 ha of land

has been acquired and reclaimed for the purpose of construction of Metro Rail Maintenance Yard under the provision of public purpose.

10) In the meanwhile, as construction of the Metro Village was also envisaged in the project, administrative sanction for conversion of an extent of 94.5255 ha of paddy field, contiguous to the Maintenance Yard, was accorded under the provisions of commercial purpose *vide* G.O. (Rt.) No. 1607/2013 dated 10.09.2013 with a condition that Social Impact Study and EIA study has to be completed before the reclamation of paddy fields for which sanction has been accorded. The 10th Respondent has already engaged *M/s. Senes India Pvt.Ltd.* Noida, Uttar Pradesh for the Social Impact and EIA Study and it is in its completion stage. Apart from 22.2183 ha already granted, an additional extent of 1.3867 ha of land has to be added for construction of Maintenance Yard and action in this regard has been taken to get a conversion order. It is stated that the concerned District Authorities have taken necessary action in strict compliance of the laws. Thus, a total of 23.6061 ha of land in Muttom at Aluva West Village and Thrikkakara North Village has been acquired for establishing Metro Rail Yard and Maintenance Shed under the KMRL project and filled in by the construction agency Delhi Metro Rail Corporation (DMRC) for undertaking the civil works. The action of filling the paddy fields was strictly as per norms and necessary sanction in this regard has been accorded by the State Government under proper procedure without destroying the ecology of the area. EIA was carried out by KMRL through a private agency. Neither any illegal filling has taken place nor has any destruction of paddy field been done since the Local Agricultural Officer has intimated that no cultivation has taken place in the area for the last 8 years. Local enquiry also reveals that it has been left without cultivation for nearly 15 years and moreover, these lands are used for dumping wastes and are known as

Chawarpadam. Application for allotment of land was submitted through proper channel to the Convener, LLMC. Panchayat President is Chairman of LLMC whose assent has been recorded in the recommendation. The filling in of paddy field so far completed is only for the purpose of Maintenance Yard and not for establishing the Metro Village and only conditional orders have been received in respect of Metro Village. The details furnished earlier on the Website specify the minimum extent of land required for establishing the Maintenance Yard and after a long and detailed study and after thorough discussions an extent of 23.6061 ha of land has been finalized and filled. The said variation in the extent of land required for the project has taken place based on a continuous study. The details uploaded on the website were of the initial status but consequently, many changes had taken place as there are changes in the alignment. Thus, for the reclamation of paddy field for the establishment of Maintenance Yard, proper applications have been placed before the LLMC for recommendation to the SLMC and after considering the recommendation of the SLMC, the State Government have passed orders to reclaim the paddy fields as per their discretion.

11) The Respondents deny the allegation of establishing a Real Estate project. To make KMRL project financially viable in conformity with the Condition No.7 (O) of the Letter No. K-14011/37/2005/MRJS-10 dated 12.07.2012 of the Government of India, it was proposed to acquire land for the Metro Village and since it is a vast project, necessary provisions for its viability have been provided by KMRL. According to the plan and dimension and viaduct area, the DMRC has designed the Maintenance Yard connecting the viaduct and the most suitable site is chosen and the alternate site suggested by the applicant cannot be considered since technically it is not feasible. Before the land was acquired and reclaimed for the project it was found lying

fallow and dumped with waste and during the rainy season it used to turn most unhygienic.

12) It was further stated in the reply that no wetland is involved in the project and this case does not attract the Wetlands Rules, 2010 as there is no conversion of wetland in this area. Only allotted paddy lands are reclaimed. Traditional *thodu* and canals are maintained by leaving a width of 6 metres and de-silting is done periodically. Further, a pond to an extent of 12,000 Sq. Meters is constructed for harvesting rain water. Since the lands under acquisition are recorded as paddy fields and not wetlands, there is no violation of the Supreme Court Orders.

13) The 10th Respondent submitted that in the Hon'ble High Court of Kerala, a Writ Petition (C) No.11609/2014(A) was filed raising the very same issues which are now raised by the Applicant in this Application and the Hon'ble High Court in its judgment dated 26.06.2014 dismissed the Writ Petition observing that it does not find any reason to interfere with the project at this stage.

14) In the reply filed by the 9th Respondent Board, it was submitted that the issue of reclamation of paddy lands and wetlands does not come under the purview of the Board and that the Application filed by the 10th Respondent for granting CTE for establishing Maintenance Yard at Muttom, Choornikkara Village under the provisions of Water Act, 1974 and Air Act, 1981 is under consideration.

15) In their reply, 11th Respondent, Kalamassery Municipality submitted that the Hon'ble High Court of Kerala was pleased to dismiss Writ Petition (C) No.11609/2014 on 26.06.2014 which raised the very same allegations contained in this Application. The above Writ Petition was seeking an order

quashing the orders issued by the Agricultural Production Commissioner, Government of Kerala permitting to fill in the paddy fields by the 10th Respondent and for prohibiting the project proponent KMRL from filling or levelling the paddy lands and wetlands comprised in *Chawarpadam* and *Katteppadam* in the limits of 4th Respondent and *Pallathipadam* in 11th Respondent geographical limits. It is further submitted by the 11th Respondent that 06.250 ha of land in Thrikkakara North Village located under its jurisdiction, has been acquired and handed over to the 10th Respondent for setting up of the project of Metro Rail Yard and Metro Village and the land acquired for the said project from Aluva West Village in the jurisdiction of 4th Respondent is more than 50 ha. It is further submitted that the work of the Yard has started and a considerable portion is already completed and any delay in the project will hamper the public interest and cause heavy loss to the State Exchequer.

16) In the reply filed by the 12th respondent, the State Environment Impact Assessment Authority (SEIAA) it is stated that the Railway projects do not come under the Schedule-I of the EIA Notification, 2006 and therefore reclamation of paddy lands for Railway project is not governed under the EIA Notification, 2006. It is further submitted by the 12th Respondent that the Act of 2008 does not impose a blanket ban on the conversion or reclamation of paddy land and moreover, if the conversion is in accordance with the provisions of the said Act, reclamation for important public purposes is permitted. It is further submitted that *vide* Rule 4(1) of the Wetland Rules, 2010, reclamation of notified wetlands is a prohibited activity and if the project area falls within the wetland, Clearance under Wetland Rules, 2010 is mandatory. But, the wetlands in the State have not been notified so far. It is also submitted that no Application in this regard has been received in the

Department of Environment and Climate Change, Kerala which is the nodal agency for Wetland Clearance.

DISCUSSION AND CONCLUSION

17) Having gone through the record placed before us and having heard the arguments of both the parties at length, it emerges that the applicant's main concern is that the project will have a devastating effect on the local ecosystem due to large scale conversion of paddy fields which come under the category of wetlands. The conversion process involves dumping of huge amount of soil/gravel and raising the ground level substantially which totally alters the landscape and hydrology leading to long term effect on the ecology of the area which is traditionally used for paddy cultivation and which also act as a sink, avoiding floods and droughts in that area. The applicant's argument is that paddy fields come under the definition of wetland and apprehends that such large scale conversion of wetlands would alter the course of the water canals and channels resulting in flooding and damage to the environment. Already in the State of Kerala, large chunks of wetlands including paddy fields have been converted for commercial purposes leading to complete destruction of the local ecosystem which is very fragile. The Wetlands act as a sponge absorbing and regulating the flow of rainwater, stabilizing the water table, and controlling the floods. But, the proposed project would alter this situation and if it is not stopped, it will lead to irretrievable damage to the environment.

18) It is a fact that KMRL is a prestigious Mass Rapid Transit System Project and Kochi being an expanding urban agglomeration, heavy vehicular traffic leads to traffic congestions and consequential increase in air pollution. The KMRL project has been grounded after conducting various studies

including the impact on the environment as well as social impact it is going to cause. The 10th respondent, KMRL states that the project satisfies all the statutory provisions mainly the Metro Railway (Construction of Works) Act, 1978, the Railways Act, 1989 and the Delhi Metro Rail (Operation and Maintenance) Act, 2002 as amended by the Metro Railways (Amendment) Act, 2009. Even though it does not require any clearance under the EIA Notification, 2006 the project proponent took up an EIA Study by the MoEF&CC approved consultant namely *M/s. Senes Pvt. Ltd.*, Noida and also a feasibility study regarding the integrated flood assessment for the construction of the Metro Rail Yard has been conducted by DMRC and then only the project was granted.

19) The Applicant objects to the construction of Maintenance Yard at Muttom involving the conversion of paddy fields. The records placed before us indicate that the Government of Kerala has approved conversion of a total of 23.605 ha of paddy lands for the purpose of construction of the Yard under Act of 2008 in a series of G.O's issued as follows:

Sl.No.	G.O.No.	Date of Issue	Extent of land granted (ha)	Location of the land in Ernakulum District
1	G.O. (Ms) No. 81/2012/Agri	02.04.2012	16.6004	Aluva West Village,Aluva Taluk
2.	G.O. (Ms) No. 242/2012/Agri	18.10.2012	0.1351	Thrikkakara North Village, Kanayannur Taluk
3.	G.O. (Ms) No. 01/2013/Agri	01.01.2013	1.4124, 3.0764	Aluva West Village,Aluva Taluk
			0.3195	Thrikkakara North Village, Kanayannur Taluk

4.	G.O.(Ms) No. 113/2013/Agri	08.04.2013	0.6745	Aluva West Village, Aluva Taluk
5.	G.O.(Ms) No. 277/2014/Agri	27.11.2014	1.3867	Thrikkakara North Village, Kanayannur Taluk
		Total	**23.605**	

Besides the above, a Conditional Order was issued in the following G.O.'s for conversion of paddy lands to establish Metro Village with the condition that EIA Study has to be completed with appropriate mitigating strategy and EC to be obtained and only thereafter, conversion activity to be taken up. It is clear that this Conditional Order was accorded by the State Government taking into consideration of the environmental issues.

Sl.No.	**G.O.No.**	**Date of Issue**	**Extent of land conditionally granted (ha)**	**Location of the land in Ernakulum District**
1.	G.O. (Rt.) No.1609/2013/AD.	10.09.2013	42.84.91	Thrikkakara North Village, Kanayannur Taluk
			50.14.33	Aluva West Village, Aluva Taluk
		Total	**92.9924**	

20) The record placed before us also reveals that WP(C) No. 11609/2014 was filed before the Hon'ble High Court of Kerala raising the very same allegations contained in this Application and for quashing the G.O.'s which permitted the conversion of paddy lands for the construction of the Maintenance Yard. The Hon'ble High Court dismissed the above Writ Petition

on 26th June, 2014. Perusal of the judgement indicates that the facts and issues raised in the Writ Petition are the same which the Applicant has raised in this Application and the Hon'ble Court, having examined the issue has dismissed the Writ Petition. It is appropriate to quote relevant portion of the Hon'ble High Court's decision:-

> *8."XXXXXXXXXXX In regard to the Metro Yard, in which the area allocated is about 50 Acres, though the learned counsel for the petitioners relied upon EIA notification dated 14.9.2006, the list of projects for which prior environmental clearance is required in terms of the Schedule, does not contain a Rail project or for putting up railways. Therefore, there is no mandate which prescribes EIA clearance for Metro Yard.*
>
> *10. XXXXXXXXXXXX Government has accorded conditional approval for acquiring an extent of 94.5255 hectares of paddy land lying contiguous to the land acquired for Metro Maintenance Yard for construction of Metro Village subject to the condition that EIA study has to be completed with appropriate mitigating strategy as suggested by the concerned agency. Therefore the apprehension expressed by the Petitioners with reference to the lack of EIA study with respect to Metro Village is clearly out of place.*
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> *11. XXXXXXXXXXX Necessary permission had been obtained under Section 10 of the Act, 2008 in respect of 22.2183 Hectares of land for the purpose of the Maintenance Yard for the Kochi Metro Rail Project. This fact is not disputed as well. Therefore, once such permission is granted, the petitioners cannot have any complaint regarding the violation of the provisions of the Act. While granting permission Government was exercising a statutory power and one cannot contend that the said power is not exercised in public interest and for a public purpose.*
>
> *19. Having regard to the law laid down by the Supreme Court, it is clear that, this is also a project for importance to the State as it is intended for increasing the infrastructural facilities in the city of Kochi and the State as well and therefore the project cannot be stalled by raising unnecessary controversies.*
>
> *XXXXXXXXXXX*
>
> *In the said circumstances, I do not find any reason to interfere with the project at this stage of the proceedings and accordingly, the writ petition is dismissed".*

21) As stated by the Applicant in his rejoinder filed on 24.02.2015, challenging the above Order of the High Court, a Writ Appeal was filed before the Division Bench wherein an Order of *status quo* as on date was passed by the Hon'ble Bench on 15.10.2014 directing that further activities i.e., filling in of land for the proposed Metro village shall be carried only after obtaining due sanction from the authority.

22) With regard to environmental issues, in our opinion, the averments made by the Applicant that the conversion of paddy fields without obtaining permission from the statutory authority under Wetland Rules, 2010 is illegal, are not sustainable since these paddy lands are not notified under the aforesaid rules as clearly mentioned from the replies of the Respondents. There is no doubt that aforesaid rules prohibit certain activities including reclamation of wetlands but unless such wetlands are notified under Rule 3 as 'Protected wetlands', there is no violation of the Wetland Rules, 2010. Rule 3 of the Wetland Rules, 2010 reads as follows:

"Protected Wetlands:

Based on the significance of the functions performed by the wetlands for overall well being of the people and for determining the extent and level of regulation, the following wetlands shall be regulated under these rules, namely:-

(i) wetlands categorised as Ramsar Wetlands of International Importance under the Ramsar Convention as specified in the Schedule;

(ii) wetlands in areas that are ecologically sensitive and important, such as, national parks, marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals, coral reefs, areas of outstanding natural beauty or historical or heritage areas and the areas rich in genetic diversity;

(iii) wetlands recognised as or lying within a UNESCO World Heritage Site;

(iv) high altitude wetlands or high altitude wetland complexes at or above an elevation of two thousand five hundred metres with an area equal to or greater than five hectares;

(v) wetlands or wetland complexes below an elevation of two thousand five hundred metres with an area equal to or greater than five hundred hectares;
(vi) any other wetland as so identified by the Authority and thereafter notified by the Central Government under the provisions of the Act for the purposes of these rules''.

Moreover, the definition of 'wetland' under Rule 2(g) of aforesaid Rules does not include paddy fields which read as follows:

"''wetland" means an area or of marsh, fen, peat land or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six metres and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of Environment and Forest, S.O. No. 114(E), dated the 19th February, 1991 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) of dated the 20th February, 1991"

23) Thus, it is clear that the paddy lands in question do not come under the provision of the aforesaid Rules as they have not been declared as Protected Wetlands. Further, the paddy lands acquired for the project are not located in any of the Ecologically Sensitive Areas declared under The Environment (Protection) Act, neither 1986 nor any rare or endangered flora or fauna is going to be affected. It is true that though large scale conversion of paddy lands, will have impact on the agricultural production and absorption and regulation of rainwater affecting the local ecosystem, it requires to be examined case by case and when such conversion is essential for the purpose of execution of a public interest project and not for any commercial gain, certain amount of flexibility is required as blanket ban may

affect developmental projects. In the case of *Indian Council for Enviro-Legal Action* v. *Union of India* (1996) 5 SCC 281, the Hon'ble Supreme Court observed:

> *"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment".*

In the case of *Essar Oil* v. *Halar Utkarsh Samiti* AIR 2004 SC 1834, a similar view was taken by the Hon'ble Supreme Court as follows:

> *"This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However there need not necessarily be a deadlock between developments on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other".*

The Hon'ble Supreme Court while considering the case of *N.D. Jayal and another.* v. *Union of India and others*, AIR 2004 SC 867 observed the following:

> *XXXX 22) "the strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should*

benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy." XXXXXX

24) With regard to the averments made by the Applicant that no EIA study has been conducted and no EC has been obtained under EIA Notification, 2006 in violation of the Environment (Protection) Act, 1986, we feel that as already upheld by the Hon'ble High Court, Metro Rail Projects do not come under Schedule-I of the EIA Notification, 2006. This was also clarified by the MoEF&CC in an Office Memorandum dated 02.05.2009. The construction and maintenance of Metro Yard is a part of the entire Metro Project and it cannot be delinked. Therefore in our opinion, no prior EC is required as already observed by the Hon'ble High Court. The applicant has not brought out any other specific issue before the Tribunal other than what has been raised before the Hon'ble High Court. Apart from stating that there will be damage to environment by virtue of conversion of paddy lands, he has not brought out any other substantial question related to environment such as whether the lands fall in any statutorily declared Ecologically Sensitive Areas or is it going to affect Mangrove, forests or violate CRZ Notification, 2011 or is it in proximity to National Parks and Wildlife Sanctuaries etc. The conversion was ordered under the provision of Act of 2008 and the State Government is competent to do it. However, with regard to establishment and operation of the Yard, the project proponent has to obtain consent under Water Act, 1974 and Air Act, 1981 for which the Application is already pending before the Board.

25) In case of establishment of Metro Village for which conditional order was already issued by the State Government that conversion shall be

taken up only after conducting EIA study and only after obtaining EC, it is premature to go into the merits of the case. It is always open to the Applicant to challenge the EC- if and when granted- under the provisions of the NGT Act, 2010. However, considering the allegation made by the Applicant that the project proponent has converted a large extent of paddy fields, we direct the District Collector to conduct a joint inspection with the KMRL project authorities within four weeks from the date of this order, to verify whether the project proponent has gone beyond the limits of 23.605 ha of paddy lands permitted for conversion for establishing Metro Rail Yard and Maintenance Shed and if any adjacent government or private land other than 23.605 ha is filled with soil and if the Yard is extended beyond the permissible limits, necessary action under the relevant provisions may be initiated against the project proponent.

26) With the above directions, the Application is disposed of. There is no order as to costs.

(Justice M. Chockalingam)
Judicial Member

(Shri. P. S. Rao)
Expert Member

Chennai.
4th February, 2016.