

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION Nos.25702, 25710 and 25832 of 2024

COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. P.Roy Reddy, learned counsel for the petitioners in W.P.Nos.25702 and 25710 of 2024.

Mr. Avinash Desai, learned Senior Counsel representing Mr. M.Pranav, learned counsel for the petitioners in W.P.No.25832 of 2024, appears through video conferencing.

Mr. Pottigari Sridhar Reddy, learned Special Government Pleader attached to the office of learned Advocate General for the State.

Mr. V.Narasimha Goud, learned Standing Counsel for the Hyderabad Metropolitan Development Authority.

2. With the consent of the learned counsel for the parties, the matters are heard finally.

3. In these writ petitions, the petitioners have questioned the action of the respondents in treating the Full Tank Level (FTL)/water spread area of Durgam Cheruvu tank to be more than Acs.160.00 as opposed to the original extent of Acs.65.12 guntas as per the original engineering standards of the said tank shown in the official descriptive memoirs of the Irrigation Department.

4. Facts giving rise to filing of these writ petitions briefly stated are that the petitioners are residents of the area, which is situated in and around Durgam Cheruvu tank. According to the petitioners, Hyderabad Metropolitan Development Authority (HMDA) issued a preliminary notification dated 07.06.2014 notifying the FTL of several tanks including Durgam Cheruvu and invited objections upto 15.07.2014.

5. It is the case of the petitioners that they have submitted objections in pursuance of the aforesaid preliminary notification. However, the aforesaid objections have not been considered till today by the Lake Protection Committee and FTL has not been notified. In the aforesaid

factual background, the following reliefs have been sought in the writ petitions:

W.P.No.25702 of 2024:

“For the reasons stated in the accompanying Affidavit, it is therefore prayed that this Hon’ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus declaring the action of the Respondents in treating the Full Tank Level/water spread area of the Durgam Cheruvu tank to be more than Acres 160, as opposed to the original extent of Acres 65.12 Guntas, as per the original engineering standards of the said tank shown in the official “Descriptive Memoirs” of the Irrigation Department, thereby affecting the Petitioner’s private property covered by Plot No.79, situated in Amar Cooperative Housing Society, Sy.No.47 of Guttala Begumpet Village, Serilingampally Mandal, Ranga Reddy District as illegal, arbitrary, wholly without jurisdiction, contrary to the principles of natural justice, violative of the provisions of the A.P.Survey and Boundaries Act, 1923 (now the Telangana Act), contrary to the safeguards provided in Articles 14, 21 and 300-A of the Constitution of India, and consequently direct the Respondents to adhere to the extent of Full Tank Level/water spread area of the said tank as Acres 65.12 Guntas and further direct the Respondents not to interfere in any

manner whatsoever with the Petitioner's peaceful possession of the said private property and pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case."

W.P.No.25710 of 2024:

"For the reasons stated in the accompanying Affidavit, the petitioner prays that the Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus declaring the action of the Respondents in treating the Full Tank Level/water spread area of the Durgam Cheruvu tank to be more than Acres 160, as opposed to the original extent of Acres 65.12 Guntas, as per the original engineering standards of the said tank shown in the official "Descriptive Memoirs" of the Irrigation Department, thereby affecting the Petitioner's private property covered by Plot Nos.63 & 64, situated in Amar Cooperative Housing Society, Sy.No.47 of Guttala Begumpet Village, Serilingampally Mandal, Ranga Reddy District as illegal, arbitrary, wholly without jurisdiction, contrary to the principles of natural justice, violative of the provisions of the A.P.Survey and Boundaries Act, 1923 (now the Telangana Act), contrary to the safeguards provided in Articles 14, 21 and 300-A of the Constitution of India, and consequently direct the Respondents to adhere to the extent of Full Tank Level/water spread area of the said tank as Acres 65.12 Guntas and further

direct the Respondents not to interfere in any manner whatsoever with the Petitioner's peaceful possession of the said private property and pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case."

W.P.No.25832 of 2024:

"In the light of the above, it is humbly prayed that this Hon'ble Court may be pleased to issue a writ, order or direction, more particularly a writ in the nature of a mandamus declaring the depiction and thereby categorization of the lands pertaining to the Petitioners herein in Sy.No.47 of Guttala Begumpet of M/s.Amar Cooperative Society layout vide layout permission dated 09.01.1995 as falling under the Full Tank Level of the Durgam Cheruvu Lake having Lake ID No.3706, vide the maps signed by Respondent No.4, uploaded on the official government websites as being wholly illegal, baseless, arbitrary and unconstitutional, as being contrary to the lake memoirs, contrary to the judgment of the Hon'ble High Court of Andhra Pradesh (erstwhile) in the case of *Smt. Sarojini v. Government of Andhra Pradesh (2004 (2) ALT 296)* and consequently set aside the same and direct the Respondent Nos.1 to 4 to demarcate and fix the FTL area as per the lake memoirs, by duly restoring and making functional the two surplus weirs, pertaining to Durgam Cheruvu, as per the official standards and pass any other order or orders as this Hon'ble

Court deems fit and proper in the circumstances of the case.”

6. Learned Senior Counsel for the petitioners in W.P.No.25832 of 2024 and the learned counsel for the petitioners in W.P.Nos.25702 and 25710 of 2024 fairly submit that the FTL of the Durgam Cheruvu tank has to be considered and determined by the Lake Protection Committee after considering the objections preferred by the petitioners. It is further submitted that the petitioners have preferred objections in pursuance of the aforesaid preliminary notification dated 07.06.2014 within the prescribed time limit therein i.e., on or before 15th July, 2014, and the Lake Protection Committee be directed to afford the petitioners an opportunity of personal hearing and thereafter to determine the FTL of Durgam Cheruvu.

7. Learned Special Government Pleader has submitted that the Lake Protection Committee shall consider the objections preferred by the petitioners and shall notify the FTL of Durgam Cheruvu lake within such time limit as may be fixed by this Court.

8. We have considered the rival submissions made on both sides and have perused the record.

9. As per the history of the said tank, in the said Descriptive Memoirs, the said tank is described as an old surfikhas tank, which is restored by Public Works Department in the year 1970. The tank is abutted both sides with hillock. The rear side of the tank is reveted with CRS Masonary to TRL Level.

10. A Division Bench of this Court, by an order dated 02.02.2010 passed in W.P.No.9386 of 2007 directed to constitute a Lake Protection Committee for preservation and protection of lakes in Hyderabad Metropolitan Development Authority (HMDA) area pending consideration of the enactment of separate legislation for constitution of Lake Protection Authority. In compliance of the aforesaid directions issued by the Division Bench of this Court, the State Government issued G.O.Ms.No.157, dated 06.04.2010, which is extracted below for the facility of reference:

“GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

MA & UD Department – HMDA – Protection of Lakes in Hyderabad Metropolitan Development Authority area – Constitution of Lake Protection Committee – Orders – Issued.

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MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT (I)
DEPARTMENT

G.O.Ms.No.157

Dated 06.04.2010
Read the following:

1. G.O.Ms.No.111, Municipal Administration and Urban Development (I) Department, dated 08.03.1996.
2. High Court of A.P. Orders dated 02.02.2010 in W.P.Nos.9386 & 14728 of 2007 and 20072 of 2008.
3. From the Metropolitan Commissioner, Hyderabad Metropolitan Development Authority, Hyderabad Lr.No.2522/HMDA/2008, dated 09.02.2010
4. From the Metropolitan Commissioner, Hyderabad Metropolitan Development Authority, Hyderabad Lr.No.2522/HMDA/2008, dated 03.04.2010.

ORDER:

In the G.O. 1st read above orders were issued prohibiting polluting industries, major hotels, residential colonies and other establishments that generate pollution in the catchment area of Osmansagar and Himayatsagar Lakes falling in the Villages listed in the annexure to the said G.O.

2. A Writ Petition No.9386/2007 was filed in the Hon'ble High Court for protection of the catchment area and area around Himayatsagar and Osmansagar lakes in tune with G.O.Ms.No.111 MA, dated 08.03.1996.

3. The Hon'ble High Court after detailed arguments in the matter has ordered in the reference second read above, among others, suggesting constitution of Comprehensive regulatory body consisting of representatives of all concerned authorities to protect all the lakes and regulate developments in the

catchment area of Himayatsagar and Osmansagar lakes.

4. The Metropolitan Commissioner, Hyderabad Metropolitan Development Authority has submitted his report on the subject matter in the references third and fourth read above.

5. Government have examined the proposal and keeping in view the reports of the Metropolitan Commissioner, Hyderabad Metropolitan Development Authority and in compliance of the orders of Hon'ble High Court in W.P.No.9386/2007, dated 02.02.2010 have decided to constitute a Lake Protection Committee for preservation and protection of Lakes in Hyderabad Metropolitan Development Authority area pending consideration of enactment of separate legislation for constitution of Lake Protection Authority.

6. Government accordingly, hereby constitute the Lake Protection Committee for preservation and protection of Lakes in Hyderabad Metropolitan Development Authority area with the following Members:

i.	Metropolitan Commissioner, Hyderabad Metropolitan Development Authority	Chairman
ii.	Representative of DG of Police	Member
iii.	Commissioner, Greater Hyderabad Municipal Corporation	Member
iv.	Managing Director, Hyderabad Metro Water Supply and Sewerage Board	Member
v.	Commissioner of Industries	Member
vi.	Member Secretary, Andhra Pradesh Pollution Control Board (APPCB)	Member
vii.	Commissioner of Panchayatraj	Member
viii.	Chief Engineer, Minor Irrigation	Member
ix.	Director of Town and Country Planning	Member
x.	Director General, Environment Protection Training & Research Institute (EPTRI) or his nominee	Member
xi.	Representative of National Geographical Research Institute	Member
xii.	Principal Chief Conservator of Forests or his nominee	Member
xiii.	Collector, Hyderabad District	Member
xiv.	Collector, R.R.District	Member
xv.	Collector, Medak District	Member
xvi.	Collector, Nalgonda District	Member
xvii.	Collector, Mahabubnagar District	Member
xviii.	Member Environment, Hyderabad Metropolitan Development Authority	Member-Convener

7. The committee can co-opt any expert or officer concerned for the effective functioning of the committee.
8. The following are the functions of the Lake Protection Committee:
 - i. Listing of all lakes along with their FTL in HMDA area
 - ii. Wide publicity and awareness campaign for protection of the lakes
 - iii. To prepare action plan for desilting of the lakes and inflow channels and such other measures required for maintenance or clearing of the inflow channels into the lakes and issue instructions/guidelines to the concerned agencies for implementation of action plan.
 - iv. Removal of existing encroachments in the FTL and foreshore area.
 - v. To clearly demarcate the lakes upto FTL by raising bunds along FTL arranging for watch and ward for preventing future encroachments and misuse of the lake environment.
 - vi. To workout and suggest modalities for regulation and rehabilitation of existing activities/structures in the catchment area of Osmansagar and Himayatsagar lakes.
 - vii. To do such other things as may be incidental or conducive to the efficient administration for protection and improvement of the lakes and their catchments.
8. The Metropolitan Commissioner, Hyderabad Metropolitan Development Authority shall coordinate

all the activities of the Committee on the above and submit periodical reports to the Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR
OF ANDHRA PRADESH)

T.S.APPA RAO
PRINCIPAL SECRETARY TO GOVERNMENT”

11. The erstwhile Government of Andhra Pradesh by G.O.Ms.No.168, Municipal Administration & Urban Development (M) Department, dated 07.04.2012, notified the Andhra Pradesh Building Rules, 2012 (hereinafter referred to as, “the Rules”). Rule 3 of the said Rules deals with restriction of building activity in the vicinity of certain areas. The relevant extract of Rule 3 reads as under:

“3. Restriction of Building Activity in the vicinity of certain areas:

(a) **Water Bodies:**

- (i) No building/development activity shall be allowed in the bed of water bodies like river or nala and in the Full Tank Level (FTL) of any lake, pond, cheruvu or kunta/shikam lands.

Unless and otherwise stated, the area and the Full Tank Level (FTL) of a Lake/Kunta shall be reckoned as measured and as certified by the Irrigation Department and Revenue Department.

- (ii) The above water bodies and courses shall be maintained as Recreational/ Green Buffer Zone and no building activity shall be carried out within:
- (1) 100m from the boundary of the River outside the Municipal Corporation/Municipality/Nagara Panchayat limits and 50m within the Municipal Corporation/Municipality/Nagara Panchayat limits. The boundary of the river shall be as fixed and certified by the Irrigation Department and Revenue Department.
 - (2) 30m from the FTL boundary of Lakes/Tanks/Kuntas of area 10Ha and above.
 - (3) 9m from the FTL boundary of Lakes/Tanks/Kuntas of area 10Ha/shikam lands.
 - (4) 9m from the defined boundary of Canal, Vagu, Nala, Storm Water Drain of width more than 10m.
 - (5) 2m from the defined boundary of Canal, Vagu, Nala, Storm Water Drain of width upto 10m.
- (iii) Unless and otherwise specified in the Master Plan/Zonal Development Plan,
- (1) In case of (ii)(1) & (2) above, the buffer zone may be utilised for road of minimum 12m width, wherever feasible
 - (2) In case of (ii)(2) above, in addition to development of recreational/ green

belt along the foreshores, a ring road or promenade of minimum 12m may be developed, wherever feasible.

(3) The above buffer zone to be left may be reckoned as part of tot lot or organized open space and not for setback requirements.

(iv) In case of Protection of Catchment area of Osmansagar and Himayatsagar lakes covered under the G.O.Ms. No.111 MA dated 08.03.1996, the restrictions on building and development activity imposed there in shall be applicable in Hyderabad Metropolitan Development Authority (HMDA) area.

(v) In case of areas along the Sea Coast, the Coastal regulation Zone (CRZ) regulations shall be followed.”

12. Thus, from a perusal of the aforesaid Rule, it is evident that the FTL area of a lake/kunta has to be reckoned as measured and as certified by the Irrigation Department and the Revenue Department. The aforesaid Rule applies to all Urban Development Authority areas and the Urban Local bodies together with Gram Panchayat areas in the State covered in the Master Plans/General Town Planning Schemes/Outline Development Plans.

13. As per the Rules, any person may make a building application for construction to the concerned Town Planning Section, who would receive such an application under self-scrutiny statement. The formative form is available in G.O.Ms.No.168, dated 07.04.2012. In the said application, Part-III pertains to the certificates information. The applicant has to obtain certificates/clearances especially when pertaining to construction made near to the water bodies from the Collector/Joint Collector/Tahsildar/Revenue Department and No Objection Certificates (NOCs) have to be furnished wherever required i.e., NOCs from the Irrigation Department in case of lands which abut water bodies, water courses and nalas, wherever required, and NOCs from Revenue Department in case of lands abutting water bodies, water courses and nalas, wherever required.

14. At this stage, it is apposite to take note of the relevant provisions of the Andhra Pradesh (Telangana Area) Irrigation Act, 1357 Fasli (hereinafter referred to as, “the Act”). The relevant extract of Section 3 of the Act reads as under:

“3. Definitions :- In this Act, unless there is anything repugnant in the subject or context, -

(a) “*irrigation work*” includes –

(i) all kuntas, reservoirs, tanks, anicuts, canals, their distributaries, channels, and sluices constructed, maintained or controlled wholly or partly by or with the consent of the Government for the supply, conveyance or storage of water;

(h) “*ayacut*” means all the area irrigable under an irrigation work;

(k) “*Irrigation Officer*” means an officer of the Public Works Department or Revenue Department appointed or deputed by the Government to perform such of the functions of Irrigation Officer as may be prescribed under this Act;”

15. Section 4 of the Act deals with appointment of officers, whereas Section 7 of the Act deals with powers of Irrigation Officer regarding use of water. Section 11 of the Act deals with issue of notice to occupier. Section 48 of the Act provides for certain matters, within boundaries of tanks or canals which are prohibited. Section 49 of the Act deals with damaging irrigation works, whereas Section 52 of the Act deals with power to remove and take into custody person who is obstructing the irrigation works. The relevant provisions are extracted below for the facility of reference:

“4. Appointment of Officers:- The Government may declare by notification in the Official Gazette the officers or persons and the local limits within which they shall exercise or perform wholly or partly the powers and duties which are conferred or imposed on the Board of Revenue, the Collector or the Irrigation Officer under this Act.

7. Powers of Irrigation Officer regarding use of water:- At any time after the day specified in the notification, any irrigation officer empowered in this behalf may, subject to the provisions of Section 11 enter on any land, remove any obstruction, close any channel and do any other work necessary for the use of the water for such purpose, and may take with him, or depute or employ, such subordinate or other persons as he deems fit.

11. Issue of notice to occupier:- When an Irrigation Officer or any other person acting under his general order or special order in this behalf desires under the provisions of Sections 8, 9 or 10 to enter into any building or enclosed courtyard or garden attached to a dwelling house into which the water does not flow from any irrigation work and which is not adjacent to a flood embankment, he shall, previously give to the occupier of such building, courtyard or garden, a written notice of such reasonable period as the importance of the case may require and shall also give sufficient time for the Pardhanashin lady to vacate the building, Courtyard or garden.

48. Certain matters, within boundaries of tanks or canals prohibited:-

The following matters are prohibited within the boundaries of a water reservoir, tank, canal or channel except that they are performed by persons authorized :-

- (a) removal of any material relating to the irrigation work;
- (b) cultivation of any kind;
- (c) sowing or planting of trees;
- (d) tapping of Abkari trees situated on the land acquired;
- (e) establishment of any new place of worship;
- (f) grazing or tethering of any animal;
- (g) vehicular traffic on bunds or inspection pathways;
- (h) passage of animals on bunds or inspection pathways;
- (i) corruption of or fouling the water;
- (j) removal or cutting of or damaging trees in any way;
- (k) other prescribed matters.

49. Damaging irrigation works:- (1) Whosoever wilfully and without the permission of the competent officer, commits or attempts to commit the following acts :-

(a) damages, alters, enlarges, or obstructs any irrigation work;

(b) interferes with, or increases, or diminishes the supply of water in, or the flow of water through, over or under any irrigation work or does some other act which reduces its utility for the purposes for which it was constructed;

(c) corrupts or fouls the water of any irrigation work by which the utility is reduced for the purposes for which it is ordinarily used;

(d) destroys, defaces or removes any land or level marks or water guage or lock fixed by competent officer;

(e) destroys, tampers with or removes the apparatus for controlling, regulating or measuring the flow of water in any irrigation work;

(f) notwithstanding any prohibition, passes or causes animals or vehicles to pass, in or across any irrigation work, its banks, or channels, contrary to rules made under section 67;

(g) wilfully causes or permits cattle to graze upon any irrigation work, or flood-embankment, or wilfully tethers or causes or permits cattle to be tethered, upon any such irrigation work or embankment, or roots up any grass or vegetation growing on any irrigation work or embankment, or removes, cuts, or in any way injures or causes to be removed, or otherwise injures, any tree, bush, hedge or grass planted for the protection of such irrigation work or embankment; and

(h) whoever contravenes any rule made under section 67 the breach whereof is declared punishable under this section, shall, on conviction before a Collector, be punished with a fine which may extend to five hundred rupees.

(2) For any contravention mentioned in clause (a), (d) or (e) of sub-section (1) if the Collector is of the opinion that in the circumstances of the case it is proper to punish with imprisonment in lieu of fine he

may commit the case to the special Magistrate appointed under section 55 or if no such special Magistrate is appointed, to the competent Magistrate concerned and on conviction before the special Magistrate or the competent Magistrate, as the case may be, shall be punished with imprisonment which may extend to three months.

52. Power to remove and take into custody person obstructing:- (1) Any person in charge of or employed on any irrigation work may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Collector or concerned Tahsildar, to be dealt with according to law, any person, who in his view:

(a) wilfully damages, obstructs or fouls any irrigation work, or (b) without permission from the competent officer, interferes with the supply or flow of water, in or from any irrigation work so as to endanger, damage or reduce its utility.

(2) when a person is arrested and produced before the Tahsildar under sub-section (1) the Tahsildar shall release such person binding him for appearance by taking security or bond and shall send the report to the Collector without delay.”

16. It appears that in the Descriptive Memoirs, the Durgam Cheruvu tank was shown to have an area of Acs.65.12 guntas. The Descriptive Memoirs consider the technical features, which have been designed and

developed for the irrigation purpose, but at present it appears that there is no irrigation ayacut and the Descriptive Memoirs by itself cannot be considered as basis for defining and deciding the FTL limits. However, the same can be considered for collateral purposes. It is pertinent to note that the Descriptive Memoirs have been made under Para 393 of the Andhra Pradesh Public Works Department Code. Admittedly, the aforesaid Code has no statutory force.

17. The HMDA issued a preliminary notification dated 07.06.2014 notifying the FTL of several tanks, including the Durgam Cheruvu tank. The relevant extract of the preliminary notification dated 07.06.2014 reads as under:

“After verification and certification by the Irrigation Department, 67 lake maps with FTL boundaries and buffer zones duly showing Revenue Survey Numbers are hereby notified under Sections 11, 13 and 54 of the HMDA Act, 2008 for filing objections and suggestions on the FTL boundary maps of the lakes as per the list enclosed by 5:00 PM on 15.07.2014 at the following address:

Metropolitan Commissioner
HMDA & Chairman
Lake Protection Committee,
Block-A, HMDA Complex,
Tarnaka, Hyderabad – 500007.

Member Environment
HMDA & Convenor
Lake Protection Committee
Buddha Purnima Building,
#6-1-2/1, TankBund Road,
Hussain Sagar,

Hyderabad – 500063.

Or alternatively be mailed to the following address:
me@hmda.gov.in (OR) director_lpc@hmda.gov.in

After examining the objections and suggestions received, if any on the FTL boundary and buffer zone of lakes notified, the final notification will be issued.

The notification is available on website of HMDA (www.hmda.gov.in).

Sd/-
Metropolitan Commissioner, HMDA
&
Chairman, Lake Protection Committee”

18. No relief as sought for by the petitioners in these writ petitions can be granted to them, as the issue is pending consideration before the Lake Protection Committee.

19. The Lake Protection Committee has issued the preliminary notification on 07.06.2014 and has invited objections. The petitioners have filed objections before the Lake Protection Committee before the date specified therein. It is the case of the petitioners that their objections have neither been decided nor a final notification has been issued notifying the FTL of Durgam Cheruvu.

20. At this stage, learned Special Government Pleader submits that the objections which are submitted by the petitioners in pursuance of the aforesaid preliminary notification may not be on record.

21. In response, the learned counsel for the petitioners submit that the petitioners shall supply a copy of the objections, which were submitted by the petitioners on the date specified in the preliminary notification, to the Lake Protection Committee within a period of one week from today.

22. In the facts and circumstances of the case, the following directions are issued:

- i) The petitioners may supply a copy of the objections, which were furnished by them on or before 15.07.2014, before the Lake Protection Committee within a period of one week from today. It shall be open for the petitioners to furnish the public documents in support of their objections already filed.

- ii) As agreed by the learned counsel for the parties, the petitioners undertake to appear before the Lake Protection Committee on 04.10.2024 at 11:00 am.
- iii) Thereupon, the Lake Protection Committee shall hear the petitioners and shall decide the objections filed by the petitioners by a speaking order.
- iv) Thereafter, the Lake Protection Committee shall issue a notification notifying the FTL of Durgam Cheruvu.

The aforesaid exercise shall be completed within a period of six weeks from the date of appearance of the petitioners before the Lake Protection Committee.

23. The learned Special Government Pleader submits that till the aforesaid exercise is carried out, no action shall be taken for demolition of the construction raised by the petitioners. The same is placed on record.

24. It is clarified that this Court has not expressed any opinion with regard to the merits of the matter, as the same has to be adjudicated by the Lake Protection Committee.

25. With the aforesaid directions, the writ petitions are disposed of.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

J.SREENIVAS RAO, J

23.09.2024

Note: Issue C.C today.
B/o.
vs