

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

M.A.No.35 of 2016 (SZ)

Applicant(s)

Respondent(s)

Ratheesh
K.R. Panavally Village
Cherthala Taluk, Alappuzha
& others

1. State of Kerala rep. by the Chief Secretary Secretariat, Thiruvananthapuram
2. Kerala Coastal Zone Management Authority Thiruvananthapuram rep. by its Member Secretary
3. Panavally Grama Panchayat Panavally, Alappuzha
4. The Deputy Director of Fisheries Alappuzha
5. Kapico Kerala Resorts (P) Ltd. Rep. by its Director Mrs.Ratna Easwaran 52, MR.Square, D.H.Road, Kochi
6. Roy M.Mathew Muthoot House, Pathanamthitta

Legal Practitioners for Applicant(s)

M/s.P.K.Ibrahim & K.K.Ashkar,
S.Muthu Vairam

Legal Practitioners for Respondents

Mrs.Suvitha for R1 & R4
Mr.T.N.C.Kaushik for R2
M/s.V.P.Raman, Shiv Sankar Radhakrishnan & M.S.Seshadri for R5 & R6
Mr.V.Varghees Amal Raja for R3

Note of the Registry	Orders of the Tribunal
	<p>Date : 4. 7. 2017</p> <p>This application is filed by the applicants for condoning delay of 57 days in filing the main application under Section 15 of the National Green Tribunal Act, claiming compensation of Rs.1 Crore from respondents 5 and 6 for deprivation of their livelihood, damage to the aquatic fauna</p>

and damages to the property and also for a direction to the said respondents to restore the Oonipads/Stake nets 1, 2 and 3 of the applicants situated between 150 buoy of inland waterways in Vembanattu Kayal and Nedyathuruthu Island covered under Patta No.947 issued by the Fisheries Department, Government of Kerala.

2. Before going into the condone delay application, it is necessary to state precisely the original case, since it has some relevance to the condone delay application. Nedyathuruth Island acquired by the 6th respondent was stated to have been used as Island farm to cultivate fish and prawn. Oonipads (Chinese fishnet) are traditional device for catching fish in the area affected by tides. A bag net is tied between the two fixed poles erected in the waterbody at a distance of 4 M across the area affected by high tide and low tide. The fish nets placed between the Oonipads get maximum fish during the time of high and low tides. There were 13 such Oonipads erected in a line across the Vembanadu Lake by grant of lease in an extent of 6 Cents comprised in Survey No.227/1/1 of Panavally Village between 150 buoy of Inland waterways in

Vembanadu Lake and Nedyathuruth Island.

3. The applicants who belong to fishermen community known as Dheevera, claiming as legal heirs of Late Karumban Krishnan and also claiming ownership over Oonnipads 1, 2 and 3 which are admittedly situated closer to the Nedyathuruth Island. The other Oonnipads allotted to various other persons are away from the Island area. By the conduct of the respondents 5 and 6 who have acquired land wherein they are stated to have illegally constructed nearly 4 dozen resorts/villas and an auditorium and swimming pool without obtaining permission to reclaim the land and in violation of the building rules and by encroachment into the portion of Oonnipads. Oonnipads 1 to 3 situated Nedyathuruth Island are affected due to the said activities of the 5th and 6th respondents, resulting in loss of income to the applicants by creating inability of catching fish and it is on that account the main application claiming compensation has been laid.

4. It is also incidentally relevant to note that M.A.No.34 of 2016 seeking permission to file the main

application by waiving the court fee, since they are living below poverty line, the Tribunal has allowed the said application.

5. In the affidavit filed in support of the M.A. for condoning the delay, it is stated that the application has been filed within five years. It is further stated that the applicants have filed W.P.(C).No.19564 of 2011 in the High Court of Kerala on 13.7.2011 complaining illegal reclamation of lake and consequent damage caused to the Oonnipads as per the complaint dated 31.12.2010.

6. The High Court in its judgment dated 25.7.2013 considering the related matters also has relegated the matter relating to the adjudication of compensation to the appropriate forum. It is stated that as against the judgment of the High Court, the 5th respondent has filed S.L.P.No.21927 of 2013 which is still pending before the Hon'ble Supreme Court and therefore according to the applicants the pendency of the matter before the High Court for two years is to be considered and that part of the period has to be deducted from the period of limitation and since the SLP filed by the 5th respondent against the said

judgment is still pending in the Hon'ble Supreme Court, it should be treated that the limitation period still continues. It is stated that even if this Tribunal consider 31.12.2010 or 14.12.2010 as starting point of cause of action, the present appeal having been filed on 11.2.2016 after deducting the period of two years of pendency in the High Court should be considered within the period of five years and in any event within the period of 60 days which is permissible and within the condonable limit under Section 15(3) of the NGT Act.

7. Therefore, according to the applicants, if the delay is calculated from 14.12.2015 till the date of filing which is on 11.2.2016 it should be only 57 days delay after five years. It is also stated if the delay is calculated from 31.12.2015, it will be only 45 days.

8. It is the applicants' case that the delay is due to the reason of collecting BPL Certificate seeking exemption from the payment of application fee for the claim of compensation. It was due to poverty it has taken some time and therefore, the delay is not deliberate or wilful. The BPL Certificate was obtained only on 13.3.2015. With

the above averments, M.A is filed to condone the delay

9. The 3rd respondent – Panavally Grama Panchayat in its reply dated 3.10.2016, while denying the contents stated in the application, has stated that no compensation can be claimed against the 3rd respondent. While admitting that the respondents 5 and 6 are the owners of property in Ward No.8 of Panavally Village in Survey Nos.263/3, 263/10/3, 263/4/2, 263/2/2 and 266/1 and also stating that it is true that the respondents 5 and 6 have made certain construction of resort and the Panchayat has given building number, it is stated that in the writ petition W.P.(C) No.19564 of 2011 filed by the applicants, in the order dated 25.7.2013 the High Court has directed the respondents 5 and 6 to demolish the constructed building, treating it as unauthorised construction and aggrieved by the said judgment, the respondents 5 and 6 have filed SLP(C).No.21927 of 2014 before the Hon'ble Supreme Court. It is learnt that *status quo* order has been passed by the Hon'ble Supreme Court and the matter is pending and therefore the 3rd respondent cannot take any further initiative.

10. The 3rd respondent further states that the allegations regarding restoration of Oonnipads, illegal construction and demolition of the same are not within the jurisdiction and power of the Panchayat. It is also stated that the applicants are not claiming any relief against the 3rd respondent.

11. It is further stated that the applicants are living below poverty line and as per the Government Order dated 10.1.2013 the Grama Panchayat is the authority to issue BPL Certificate for distribution of food grains through ration card. The Government of Kerala has issued another G.O authorising the Block Development Officer to issue BPL Certificate for other purposes.

12. The 5th and 6th respondents in their reply dated 7.9.2016 have stated that the main application is totally barred by limitation and also liable to be dismissed for suppression of facts. The main application is liable to be dismissed.

13. A preliminary objection is raised regarding the condone delay petition that the application is filed based on false statements and suppression of material facts.

The High Court in the order dated 25.7.2013 passed in W.P.(C) No.19564 of 2011 has directed the applicants to approach proper forum for redressal and after two years and 7 months the present application is filed before this Tribunal. Apart from denying that there is any obligation on the part of respondents 5 and 6 for paying compensation, while reserving the right to raise that ground at a later point of time, it is stated that even as per the cause of action first arose for the claim of compensation was on 14.12.2010 and 3.12.2010 the dates on which complaints were written to the District Collector and Chief Minister of Kerala even as per the admitted case of the applicant. The said complaints themselves make it clear that the cause of action arose even before those dates.

14. It is further stated that the applicants have deliberately suppressed the factum of filing of suit in O.S.No.556 of 2008 on 22.7.2008 by one Narayanan and Late Velayudhan before the District Munsiff Court, Cherthala against the present respondents 5 and 6 and the present applicants were impleaded as the legal heirs

of the plaintiffs therein at a later point of time. The said suit was dismissed against which an appeal was preferred in A.S.No.16 of 2011 and it was during the pendency of the said appeal, the appellant Velayudhan died and the present applicants were impleaded as legal heirs and the appeal was dismissed for default and the issue involved in the said appeal is pertaining to the same cause of action which is raised before this Tribunal.

15. First of all, the suit was filed on 22.7.2008. In respect of one of the parties in the suit, the present applicants claim as legal heirs, the cause of action in fact arose from 22.7.2008 and therefore the present application is filed beyond the period of limitation prescribed under the NGT Act particularly Section 15 which provide the filing of application claiming compensation within a period of five years from the date on which the cause of action first arose and only if sufficient cause is shown, the Tribunal will have jurisdiction to condone delay of further 60 days and thereafter the Tribunal itself has no jurisdiction.

16. Therefore, according to the respondents 5 and 6, if

the term 'cause of action first arose' which is to be taken into consideration, the main application is totally barred by time and beyond the condonable limit. Even from the date of commencement of the National Green Tribunal on 18.10.2010, if five years period is calculated the period of limitation would have ended on 18.10.2015 and the application having been filed on 15.3.2016 is beyond the condonable limit of 60 days. It is also stated that the NGT has already held that when there is specific provision for limitation under Special Statute, there is no question of exclusion of period and that is not permissible as the NGT, a statutory body, is bound by the provisions of the NGT Act and not the Code of Civil Procedure or Limitation Act.

17. According to Mr. P.K. Ibrahim, learned counsel appearing for the applicants by excluding the period of little more than two years while the matter was pending in the Hon'ble High court of Kerala, the application should be deemed as application filed within the period of five years. It is also his submission that in the detailed judgment, while dealing with other cases the High Court has held that in respect of claim of compensation, it is for the applicants

to approach the appropriate authority. According to the learned counsel where compensation has not been rejected and left open to be agitated in the proper forum and here the NGT, the period of pendency cannot be a disadvantage to the applicants in claiming compensation. He would submit that the Tribunal which is created for the purpose of rendering environmental justice, must go beyond the technicalities instead of strictly looking into the number of days delay and consider on merits of the case to fulfil the noble object of the NGT Act. It is his submission that when the High court in the judgment dated 25.7.013 in the writ petition filed by the applicants in W.P.(C) No.19564 of 2011 has held that the conduct of the respondents 5 and 6 would amount to encroachment and destruction of stakenets would deprive the right of the applicant, the date of judgment of the High court would be the cause of action first arose. He also submits that against the CRZ Notification and Land Conservancy Act, the respondents 5 and 6 were involved in the reclamation of land on the basis of which complaints were given on 31.12.2010 and that the exact date of destruction of

stakenets were not traceable. The said date of complaint viz., 31.12.2010 is cause of action for the purpose of limitation and therefore the application having been filed on 11.2.2016 should be taken as application filed within the permissible limit of this Tribunal. It is his submission that the prior prosecution of the matter before the High court in filing the writ petition stated above are bona fide particularly when the Hon'ble Supreme Court has permitted in many such cases that compensation can be paid under Article 226 of the Constitution of India by the High Court in cases where there is deprivation of livelihood under Article 21 of the Constitution of India. While the Hon'ble High Court has directed to demolish the encroachment made by the respondents 5 and 6, it has declined to grant compensation and restoration of stakenets on the basis that the same can be decided by appreciation of evidence and the High Court, as a writ court exercising jurisdiction under Article 226 of the constitution of India cannot decide the disputed question of facts. It is his case that even after the NGT has come into existence until the judgment in Bhopal Tragedy Case by

the Hon'ble Supreme Court on 9.8.2012, the writ courts were entertaining writ petitions for compensation. Therefore on the date when the writ petition was filed before the Hon'ble High Court of Kerala, claiming compensation the same was a bona fide litigation and therefore the period of pendency before the High court has to be excluded while calculating the period of limitation under the NGT Act. The learned counsel would insist that the High court has relegated the matter to the appropriate authority in respect of compensation, not on the ground of want of jurisdiction but due to the reason it requires adduce of oral evidence. He also would rely upon the judgment of the Hon'ble Supreme Court reported in M.P. STEEL CORPORATION V. COMMISSIONER OF CENTRAL EXCISE (2015 (7) SCC 58 to show that Section 14 of the Limitation Act apply for rendering substantial justice. It is his submission that the order of the Principal Bench of NGT relied upon by the project proponent in JESURATNAM & OTHERS V. MINISTRY OF ENVIRONMENT & OTHERS is only an *obiter dicta* and has no binding value. In so far as it relates to the filing of

the suit in O.S.No.556 of 2008, the learned counsel would contend that the applicants have not filed the suit. The said suit relates to the stakenets 9, 10 and 11 belonging to Narayanan and Velayudan whereas the present compensation is in respect of stakenets 1, 2 and 3 which are close to Nedyathuruth Island and it was only after one of the plaintiffs died, during the appellate stage, in respect of those stakenets 9, 10 and 11 the applicants were impleaded as LR's. It is his case that the subject matter of the suit is totally different from the claim of compensation in this application.

18. Per contra, it is the contention of Mr. V.P. Raman, learned counsel appearing for respondents 5 and 6 that the period of limitation should be strictly construed in accordance with NGT Act, particularly under Sections 14 and 15 and a careful reading of the said provisions makes it clear that there is no scope for excluding the period of limitation when the writ petition was pending before the High Court of Kerala. It is his case that even otherwise choosing a wrong forum when under a special enactment prevails for claiming compensation, will not be an excuse

for the purpose of excluding the period of pendency in a wrong forum. It is his further submission that while it is true that even in the suit which was filed in 2008 the applicants were not the original parties, when they were impleaded in the appellate stage later in respect of other Oonnipads other than 1, 2 and 3 by applying the provisions of Section 21 of the Limitation Act, it should be construed that the cause of action for the applicants herein in the said suit should be from 2008 the original filing of the suit and therefore the present application for condonation of delay is beyond the permissible limit, as per the NGT Act. It is his further submission that when the stakenets were affected in 2008 for which suit was pending, necessarily the stakenets 1 to 3 which are close to Isand should have affected first and therefore the cause of action for the so called damage from the fishnets of the applicants should be treated from 2008 onwards. He submits that even the letters which are admittedly written by the applicants dated 31.12.2010 and 14.12.2010 state that the cause of action was one year before the date of the said complaints. In such circumstances, even as per

the document relied upon by the applicants, the application has to be rejected. He also submits that there is no *bona fide* on the part of the applicants in proceeding in the High Court wherein the claim was only for removing encroachment, even though it is incidentally for compensation and the present application which is not filed as per the direction of the High Court has to be construed strictly in accordance with the provisions of the NGT Act and by considering the same, the application is totally devoid of merits.

DISCUSSION AND CONCLUSION:

19. After referring to the contents of affidavit filed in condone delay application as well as reply, documents and judgments referred to and considering the facts and circumstances of the case, we are of the view that we have to refer to some of the admitted case. In the clause relating to limitation in the proposed appeal, the applicants only rely upon two complaints made by them dated 31.12.2010 and 14.12.2010 relating to the damages stated to have been caused to the Oonnipads. They also rely upon the judgment of the High Court in W.P.(C).No.19564

of 2011 which was admittedly filed on 13.7.2011 by the applicants and disposed of the same by the Hon'ble High Court of Kerala on 25.7.2013. For proper understanding of the issue, it is relevant to extract the actual contents in the main application under the caption 'Limitation' which reads as follows:

"Limitation

The present application is filed within the period of 5 years. The applicants filed W.P. (C) No.19564 of 2011 on 13.07.2011 before Hon'ble High Court of Kerala after finding no response to the complaint of the applicants to the illegal reclamation of the lake and consequent damage caused to the Onnipads vide their Annexure A6 dated 31.12.2010, Annexure –A7 dated 31.12.2010, Annexure A8 dated 14.12.2010 and Annexure A9 dated 31.12.2010. High Court relegated the matter to appropriate forum for adjudicating the claim for compensation vide Annex-A16 judgement dated 25.07.2013. The 5th respondent has challenged the order of the High Court in SLP No.21927 of 2013 which is still pending before Hon'ble Supreme Court. Hence the application is within time.

Further, if by any chance, the Hon'ble Tribunal consider the cause of action from the date of 14.12.2010 and 31.12.2010, the period of five year expire on 14.12.2015 and 31.12.2015 and this Tribunal is vested with the power to condone the delay upto sixty days under proviso to section 15 (3) of the NGT Act. The delay is calculated from 14.12.2015 or 31.12.2015 there is only 57 or 41 days delay. The delay has been caused only due to the time taken for collecting the BPL certificate of the applicants which is necessary to seek exemption from payment of application fee for the amount of compensation claimed in the application. The applicants on account of their poverty otherwise would not have able to file this application for want of sufficient application fee. The delay occasioned is not deliberate or wilful. In the circumstances, this Hon'ble Tribunal may be pleased to condone the delay in filing this application failing which irreparable injury will be caused."

20. Admittedly, W.P. (C) No.19564 of 2011 is stated to have been filed by the applicants on 13.7.2011, as it is

found in the judgment of the Hon'ble High Court dated 25.7.2013. The writ petition was filed by the applicants in the High Court of Kerala as follows:

“This Writ petition has been filed by ten petitioners. The 8th respondent is the Kapico Kerala Resorts (P) Ltd. and Shri Roy M.Mathew as the party respondent (hereinafter referred to as the Company). The ninth respondent is a Director. This is a Writ Petition filed on the basis that there were “Oonnipads” (stake nets) located near the Nedyathuruthu island. Essentially, the petitioners claim under one Karumban Krishnan who is stated to be a traditional fisherman and who had obtained stake nets 1, 2 and 3 under patta No.947 from the Fisheries Department, Government of Kerala about seventy years back. It is their case that the Nedyathuruthu Island was agricultural land cultivated with paddy field in water-locked area and the sand bund. In some portions, it is alleged that prawn cultivation was also being carried out. There were only few families in the entire island. It is the petitioners' case that the company has no permit to reclaim paddy field. It is alleged that respondents 8 and 9 proceeded to construct resorts in the island. Ext.P5 is the report of the Assistant Engineer of Thykkattussery Grama Panchayat recommending building permit subject to the condition that the proposed construction must be upto or beyond the existing building, otherwise, CRZ will be applicable. There is a case of encroachment into the Vembanad Kayal (Lake) by respondents 8 & 9. There is reference to O.S.No.556/08 filed by owners of stake nets 9, 10 and 11 before the Munsiff Court, Cherthala. The Suit was dismissed on 13.12.2010. Exp. P6 was a commission report dated 14.12.2010 filed on 03.01.2010. The plaintiff carried the matter in appeal and injunction order was granted vide Ext.P7. According to the petitioners, the stake nets belong to the petitioners, they are closer to the island and the illegal reclamation has damaged the three nets. Ext.P8 is a complaint to the District Collector. Ext. P9 to P11 are further complaints. It is alleged that the total income from the stakes was Rs.4,20,000/- per year out of which Rs.1,20,000/- will go towards expenditure. There is a loss of income of around Rs.3,00,000/-. Ext. P12 purports to be the photographs of the island in 2011 before the construction, encroaching the lake. Ext.P13 purports to be photograph of concrete pipes filled by respondents 8 and 9 around the island, encroaching the Vembanad Kayal (lake) for constructing the resorts. Ext. P14 is produced to show reclamation of the lake around the island showing JCB. It is produced to show the alleged encroachment (alleged reclamation of the integrated portion). Ext.P15 is further photograph produced to show the construction of the resort in the island and it is alleged that it is done encroaching the Vembanad lake. In Ext.P16 photograph it

is alleged further that it is in the area where the stake nets of the petitioners were situated. Ext. P 17 is also photograph showing the stake net No.4 and the present platform. In action is alleged against respondents 1 to 7.”

21. It is relevant to note that on the date of filing of the said writ petition wherein the applicants herein who were the petitioners have also claimed compensation from respondents 5 and 6 for loss of income from stakenets in respect of Oonnipads 1, 2 and 3 and admittedly the said Oonnipads/stakenets were closer to the island and it was the specific case of the applicants that by illegal reclamation made by respondents 5 and 6 the stakenets 1, 2 and 3 were damaged.

22. The NGT Act, notified in the Gazette of India on 2.6.2010 has established the National Green Tribunal on 18.10.2010. On 5.5.2011 the Central Government has specified Delhi, as the ordinary place of sitting of the National Green Tribunal. By a further notification dated 17.8.2011, the Central Government has specified various Zones, including the Southern Zone at Chennai, however, stated that till the Zonal Benches are functional, the aggrieved person can file application before the National Green Tribunal, Delhi. These are the dates which make

very clear that on the date of filing of the writ petition viz., 13.7.2011, the National Green Tribunal was notified and has become functional at New Delhi.

23. Section 15 of the NGT Act enables the Tribunal to grant relief of compensation and restitution specifically stating that such application can not be entertained by the Tribunal unless it is made within five years from the date on which the cause of action for such compensation or relief first arose. The provision also enables the Tribunal to condone further 60 days delay, if sufficient cause is shown.

24. Section 15 of the Act which is as follows:

15 Relief, compensation and restitution. –

(1) The Tribunal may, by an order, provide,-

a) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

b) For restitution of property damaged;

c) For restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose: Provided that the Tribunal may, if it is satisfied

that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

- (4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*
- (5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority*

25. It is also incidentally necessary to quote that the National Green Tribunal, which is a creature of Parliamentary enactment, specifically contains the period of limitation and period of condonable limit. The Tribunal is bound by the special statute and therefore the import of the provisions of the Limitation Act which is relating to continuing cause of action or otherwise are not applicable to the Tribunal. This has been established by various decisions of the Tribunal and the judgment of the Hon'ble Apex Court.

26. In the batch of writ petitions, the Hon'ble High Court has in clear terms held that there has been encroachment by various parties which include respondents 5 and 6. However, in so far as it relates to

the claim of compensation by the present applicants in the writ petition, the Hon'ble High Court has clearly held that there is no jurisdiction regarding compensation and only observed that it is free to agitate their grievances in any competent forum. Therefore, it is not correct to state that the High Court has relegated the applicants to the NGT, since it cannot appreciate facts under Article 226 of the Constitution of India. The relevant portion of the judgment of the Hon'ble High Court dated 25.7.2013 runs as follows:

“131. The upshot of the above discussion is as follows:

W.P. (C) Nos.4808/12, 2947/13, and 28485/11 will stand dismissed. W.P. (C) Nos.8299/12, 19564/11, 34799/11 and 12965/12 are disposed of as follows:

As far as encroachment by the company is concerned, we notice that already action has been taken under the Land Conservancy Act. We only direct that the said action will be proceeded with in accordance with law and we also reiterate that it will be open to the Company to take up all the contentions available in law. We decline jurisdiction in so far as reliefs relating to compensation and the restoration of stake nets are concerned in W.P.(C) No.19564/11. But we make it clear that the petitioners are free to agitate their grievances in any competent forum.”

27. In so far as it relates to the claim of compensation made before the Hon'ble High court, the High Court in clear terms has rejected the claim of compensation and restoration of stakenets on the ground of want of

jurisdiction, particularly relating to W.P.19564 of 2011 filed by the applicants. The further observation of the Hon'ble High Court that the applicants are free to agitate their grievances in any competent forum, does not, in our considered view, amount to permitting the applicants to approach the NGT by excluding the period of pendency of the writ petition while such applications are filed. Therefore, it is clear that the observation of the Hon'ble High court has not directed exclusion of the period of pendency when a competent forum is approached but it is made implicitly clear that such approach of the competent forum must be in accordance with law. On the factual matrix of this case, it means that the applicants should satisfy this Tribunal that they have approached it in accordance with the provisions of the NGT Act. Again it is to be reiterated that in the absence of any observation by the Hon'ble High Court, excluding the period of pendency, this Tribunal, having been created by a Parliamentary enactment, is to act strictly in accordance with the NGT Act. This is in addition to the fact that when the NGT was very much functional, the applicants have chosen to

approach the Hon'ble High Court on 18.7.2011, claiming compensation and that may be one of the reasons for the Hon'ble High Court to observe that the petitioners are free to agitate their grievances in any competent forum.

28. The next aspect is relating to the complaint stated to have been made by the applicants in respect of damages caused to the Oonnipads on 14.12.2010 and 31.12.2010. The applicant have filed in the typed set of papers a memorandum submitted by All Kerala Dheevara Sabha and that is a memorandum submitted before the Hon'ble Chief Minister of Kerala. This general representation made by the association without reference to the applicant against the company Cappico, a private resort stated to have made encroachment in Nedyathuruth. Even though the representation dated 14.12.2010 states that during the last one year encroachments are made in 10 acres poramboke kayal by construction of granite wall and erecting piling of construction of jetty which includes 13 Nos. of Oonnie nets belonging to fishermen in the area, obviously the reference to Oonnipad nets is relating to Oonnipad 1, 2 and 3

subject matter of issue before this Tribunal. The said memorandum relied upon by the applicants is as follows:

To
Before the Hon'Chief Minister of Kerala

Sub: Encroachment of Vembanattu Kayal Reg:

Memorandum Submitted before the Hon'. Chief Minister of Kerala

Due to the inaction of the concerned authorities encroachment of Kayal by those who are engaged in the construction of Resort along the shores of the Vembanettu Kayal and the several Thuruths in the middle of the Kayal is astonishingly increasing.

The Company named Cappico engaged in private resorts construction near Perumbalam island is widely encroaching Kayal Purampokku. Their encroachment is becoming a threat even to the national water way. The Nedyathuruth, having an extent of 11 Acres 23 cents in Kayal Survey No.266/1, 263/3 of the Panavally village in Cherthala Taluk was purchased by the Muthoot Group. The Resort construction was begun in the place under the joint partnership of Sri Roy M.Mathew (Chairman), Iswaran Pillai, Rethna Iswaran and others. During the last 1 year, it is found that these people have encroached 10 Acres of Purambokku Kayal by constructing granite wall around the wall and by erecting concrete piling for construction of a jetty. Thirteen numbers of Oonie nets belonging to the fishermen in the area are also included in the above encroachment. Several complaints were raised before the revenue authorities but no action was taken.

We request necessary action may be taken by your Honour for the proper survey of the land of the resort and to identify the Kayal purambokku to the satisfaction of the common public, stopping the construction of the resort by encroaching purambokku Kayal.

Sd./-
N.R.Shaji
Taluk Secretary

29. The applicant particularly relies upon a representation dated 31.12.2010 made to the District

Collector, Alleppey signed by K.R. Ratheesh, the 1st applicant. It refers to the conduct of respondents 5 and 6 in constructing a private resort in various survey numbers which are included in this application. But it clearly states that in the last six months all the three Oonipads viz., Oonipads 1, 2 and 3 have been destroyed completely by construction of jetty. Again for proper appreciation of the factual position, it is relevant to extract the letter of the 1st applicant to the District Collector which reads as follows:

“From
Ratheesh K.R.
Kalambukattu Nikarth
Panavally PO
Cherthala

To

Hon'ble Dist. Collector
Alleppey

Sir

Sub: Encroachment of Kayal and Licenced Oonies reg.

I am the successive owner of the Oonies No.1 2 and 3 in the 13 Onie nets in the 6 cents of Kayal in Survey No.227/1/1 in the village limit of Panavally village, in the middle of Vembanattu Kayal near Nedyathuruth. This Oonies are our ancestral properties for which we remit taxes to the Government and over which we have absolute rights. To the north of our Ooniadu it is the purampokku kayal and to the north of it the Nedyathuruth of 11.23 Acres in extent. As per document No.1625/07 dated 15.05.2007 this Thuruth was purchased by a Kochi based Company namely Cappico Kerala Resort Pvt. Ltd. As per Survey Nos. 266/1/87, 266/1/88, 263/4/2, 263/10/3, 263/3, 263/4, 266/1/1, 266/1/56, 263/2/2, 262/1, 263/3 the total extent of the Thuruth was 11.23 Acres. The present owners of the Thuruth and their partners under the Chairmanship of Sri Roy

M.Mathew are constructing a private Resort here. The said excavated from the Thuruth and surrounding Kayal for the construction of villas is being deposited in our Oonipadu and large scale encroachments are going on in the Kayal. For these reasons, we are unable to do fishing installing Oonies in the Kayal for the last one year. Within the last 6 months all my 3 Oonies have been destroyed completely in course of constructions and they have constructed a Jetty in the Oonipadu by breaking other Oonies also. The encroachment is still going on.

As a result of the encroachment of the Kayal by the said Company the total extent of the Thuruth has gone up to 18 Acres. So it is humbly requested that your Honour may pass appropriate orders for stopping encroachment and restore our Oonies and direct the Company to pay compensation for our loss of income and occupation.

By sd./-
Ratheesh K.R.

(Owner of Oonipadu No.1,2,3 Nedyathuruth, Cherthala Grand son of Karumban Krishnan 21.12.2010 Malayattil Nikarthil)"

30. In addition to that, on the same date viz, 31.12.2010 the 1st applicant has preferred a complaint to the Sub-Inspector of Police, Poochakkal wherein also by referring to various survey numbers and Oonipads 1, 2 and 3 were stated to have been destroyed in the past six months from the date of such representation. It is relevant to extract the representation relied upon by the applicant which reads as follows;

"Petition submitted before the Hon'ble Sub Inspector, Poochakkal

Complainant: Ratheesh, S/o Ravi, Ward 6 Paanavally Village and others

Accused: Roy M.Mathew, Chairman, Kapiko, Kerala Resorts Pvt.

Ltd. & Partners

Sir,

Sub: Encroachment of the lake involving the area of licensed stakes

I am the legal heir of the stakes net holder of stake nets 1, 2 & 3 among the 13 stakes nets in 6 cents of lake with Sy.No.227/1/ving1h title deed near Nediyaamthuruth, towards the center of Vembanad lake within Paanavally village limits. We are traditional fishermen and we enjoy the possession of these stake nets with the right to transfer and also pay tax for it. Towards the north of our Oonipaadu there exist puramboke lake and further towards its lies Nediyaamthuruth Island, Kapiko Kerala Resorts Pvt. Ltd. having its Headquarters at Kochi acquired the Island involving 11.23 Acres of land as per Sy.Nos.226/1/87, 266/1/88, 263/4/2, 263/10/3, 263/3, 266/1/1, 266/1/56, 263/2/2, 263/1 and 263/3 through document No.1625/07 registered on 15.05.2007. The accused is constructing a private resort on the island and the said obtained on digging is being deposited on the Oonipaadu and on the puramboke lake, due to which we could not do fishing using stake in the previous year. During the construction in the past 6 months, they constructed a jetty completely destroying 3 of my stakes and continue their encroachment by breaking 3 other existing stakes in the area.

The Area of the island extended upto 18 acres due to encroachment on the puramboke lake and title deed property by the Company. So I humbly request you to take appropriate actions to stop the construction by the Accused company and to reinstate the Stake nets in our title deed property and also to get us the compensation for the loss of job which have incurred to us.

Yours faithfully
Ratheesh K.R.

Paanavally
31.12.2010

(Grandson of Karumban Krishnan
Malayattil Nikarthil, Holder of 1,2,3)
Oonippadu, Nediyaamthuruthu”

31. From these two representations, which are consistent, on which the applicants have made reliance, it is clear that the cause of action itself did not arise on

31.12.2010 but six months before that date. Section 15 of the NGT Act prescribes limitation to start from the cause of action first arose. By relying on the said two representations, the cause of action has arisen much before 31.12.2010. The application filed on 11.2.2016 is beyond the condonable limit of this Tribunal under Section 15 of the NGT Act.

32. Therefore, looking into any angle, since the delay is more than the permissible limit granted by the specific statute, we are unable to accept the contention of the learned counsel appearing for the applicants that a lenient view should be taken. Law is well settled that when a special law specifies the period of limitation, particularly the NGT Act, then there is no question of application of any other law, particularly the Limitation Act for the purpose of condoning the delay. Therefore, beyond the period of condonable limit, this Tribunal has no power or jurisdiction to condone the delay. In the light of our finding that a batch of writ petitions was pending in the Hon'ble High Court and the period of pendency cannot be taken into consideration for the purpose of excluding the said

period, we are unable to accept the contention of the learned counsel appearing for the applicants for the purpose of condoning the delay and the delay is not within the permissible limit of this Tribunal. Further, the challenge of the judgment of the Hon'ble High Court by the respondents 5 and 6 before the Hon'ble Apex Court and pendency of the same has nothing to do with the period of limitation to be calculated in so far as it relates to the claim of the applicants herein.

33. As we have decided the issue on the basis of the above said fact, we are of the view that there is no necessity for us to traverse to the other issues, particularly the pendency of the suit O.S.No.556 of 2008 and its implications in the appeal wherein the present applicants were impleaded as parties/LRs of the deceased owner of Oonnipads 6, 7 and 8. Further, it is relevant to note that when in respect of Oonnipads which are away from the island are stated to have been affected in the year 2008, it cannot be said that at that time there would not have been any damage to the Oonnipads 1, 2 and 3 which are situated towards island. However, we are not expressing

any opinion on the said submission made by the learned counsel for the parties.

34. Considering the overall issues particularly, taking note of the fact that the Limitation Act cannot be made applicable to the facts and circumstances of the case, we do not see any reason to condone the delay in filing the application which is beyond the period of limitation prescribed to this Tribunal.

Accordingly, M.A.No.35 of 2016 stands dismissed. No cost.

....., JM
(Justice Dr. P. Jyothimani)

.....EM
(Shri P.S. Rao)

NGT