

**BEFORE THE NATIONAL GREEN TRIBUNAL, SITTING
AT CHENNAI
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Prd

Self-attested
[Signature]
(K V SRINIVAS)

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**BEFORE THE NATIONAL GREEN TRIBUNAL, SITTING
AT CHENNAI**

ORIGINAL APPLICATION NO. 9 OF 2023

(Under Section 18(1) r/w Section 19(1) of the National Green Tribunal Act, 2010)

IN THE MATTER OF:

Forum for Social Justice & Anti-Corruption (NGO) Rep. by its General Secretary, Door No. 58-14-87/2B, Marripalem, Vuda Colony, Visakhapatnam - 530018, Phone: 8688181116, E-Mail: a.mallibabu@gmail.com

.....APPLICANT

VERSUS

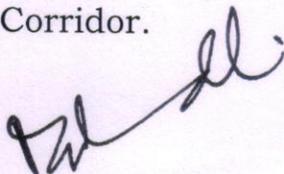
1. State of Andhra Pradesh Rep. by its Chief Secretary to Govt, Department of General Administration, Building No. 1, I Floor, Interim Government Complex, Secretariat, Velagapudi, Guntur, Andhra Pradesh. Phone: N.A., E-Mail: cs@ap.gov.in

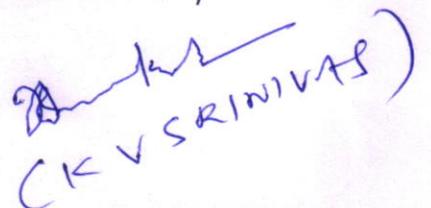
2. Collector, Srikakulam District, O/O Collectorate, Srikakulam. Phone: 08942-222565, E-Mail: Collector.skml@gmail.com

.....RESPONDENTS

**ADDL OBJECTIONS OF THE APPLICANT
ABOVENAMED AGAINST THE FINAL REPORT, DATED:
06.05.2023 (FILED ON 07.05.2023) BY THE
RESPONDENT NO. 2**

1. It is respectfully submitted that as per the report vide RC No. 396/2022, dated: 26.12.2022 of Tahasildar, Saravakota (M), Srikakulam (D) and I-B record, the land admeasuring Ac. 123.47 in Sy. No 360 of Kummarigunta (V) and Ac. 2.73 in Sy. No 452/2 of Thogiri Revenue (V) of Saravakota (M), Srikakulam (D) in the state of Andhra Pradesh is classified as "Ralla Gutta" i.e Hill Lock / Corridor.




(CKV SRINIVAS)

2. It is respectfully submitted that the following facts are noticed in the report vide RC No. 396/2022, dated: 26.12.2022:

i. It is noticed that an extent of Ac. 2.73 cents in Sy. No. 452-2 of Thogiri Revenue Village is classified as Ralla Gutta (Hill Lock / Corridor Area).

ii. However, the proposed Anganwadi Building is also in Sy. No. 452-2 of Thogiri Revenue Village in the Ralla Gutta (Hill Lock / Corridor Area) and very adjacent to the said old house.

iii. Since there is no other suitable place for construction of Anganwadi Building in Aludu Village, except at the proposed Ac. 0.03 cents area in Sy. No. 452-2 of Thogiri Revenue Village, i.e Ralla Gutta (Hill Lock / Corridor Area)

iv. On 26.12.2022, the Village Revenue Officer, Aludu, Mandal Revenue Inspector again visited the land in Sy. No. 452-2 of Thogiri Revenue Village i.e Ralla Gutta (Hill Lock / Corridor Area) and warned the complainant through this Endorsement, as not to disturb the construction work of Anganwadi Building.

3. It is respectfully submitted that 10 trees more than the age of 150 years etc in Ralla Gutta (Hill Lock / Corridor Area) in Saravakota (M), Srikakulam (D) the state of Andhra Pradesh cut down in the name of construction of Anganwadi Building.

4. It is respectfully submitted that as per Para 3(a)(ii) of the G.O. Ms No. 571, Revenue (Assignment-I). Dept., Dated: 14.09.2012, only waste and dry lands should be proposed for alienation and wet, irrigated lands should not normally be considered for such as, tank beds, river beds,

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CKV SRINIVAS)

hillocks with afforestation etc shall not be alienated or allotted. Further, as per Para 3(c) (viii), the ban on change of classification of tank bed lands shall be strictly enforced.

5. It is respectfully submitted that in view of the aforesaid facts and condition, the applicant filed OA 9 of 2023.

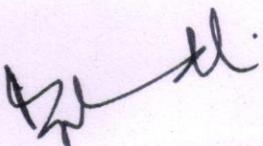
6. It is respectfully submitted that the order, dated: 03.02.2023 of the NGT passed in OA 9 of 2023 is as follow:

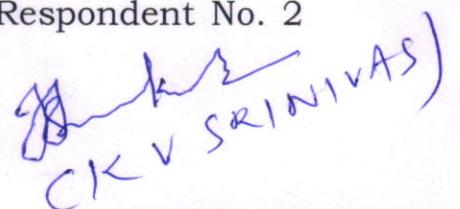
"The learned counsel Mrs. Madhuri Donti Reddy accepts notice on behalf of Respondent No. 1 & 2. Admittedly, the 10 number of trees have already been cut and removed from the said survey numbers and the photographs also revealed that some constructions are already been made. The only objection is that they should not have cut the trees and should not have allowed the private buildings to come up in the hillock area viz., 'Ralla Gutta'.

In this regard, we direct the 2nd respondent namely, the District Collector - Srikakulam to enquire into the matter after affording an opportunity of hearing to the applicant herein and pass appropriate orders, considering the above said issue of cutting of trees.

Let this exercise be completed within 4 (Four) weeks time and the compliance report may be filed by the District Collector - Srikakulam on 06.03.2023."

7. It is respectfully submitted that Respondent No. 2 appointed a joint committee through Rc No. 2176/2022/E1, dated: 21.02.2023. All the members except the Joint Collector participated in the inspection, dated: 23.02.2023 and the applicant submitted his report, dated: 23.02.2023 to the Respondent No. 2. But either the official members of the Joint Committee appointed by the Respondent No. 2 through his proceedings vide Rc No. 2176/2022/E1, dated: 21.02.2023 or the Respondent No. 2




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did not consider the report, dated: 23.02.2023 of the applicant.

8. It is respectfully submitted that the Respondent No. 2 did not execute the order, dated: 03.02.2023 of this Tribunal. Hence, the Applicant filed EA 2 of 2023 which is pending before this Tribunal.

9. It is respectfully submitted that the Respondent No. 2 made false submissions through the report/order vide Rc No. 2176/2022/E1, dated: 07.04.2023.

10. In view of the aforesaid facts and condition, the applicant filed these addl objections against the final report, dated: 06.05.2023 (filed on 07.05.2023) by the Respondent No. 2 which the applicant may take at the time of hearing after craving leave of this Hon'ble Tribunal:

OBJECTIONS

Objection No-1: When there is allegation against the Tahsildar, Saravakota (M), she can't take shelter under joint committee.

Objection No-2: Many of the grabbers made illegal constructions including Granite Polishing Unit and without any construction permission from the gram panchayat in Hill Lock / Ralla Gutta Sy No. 360 of Kummarigunta (V). But the official members of the joint committee did not inspect that area in Sy No. 360 of Kummarigunta (V).

Objection No-3: As per the survey report & certificate by the surveyor, dated: 31.03.2023, a private building (i.e granite polishing unit) constructed illegally by grabbing Hillock i.e Sy No. 360, Kummarigunta (V), Saravakota (M) which is violation of the judgment, dated: 14.09.2022 passed by the Hon'ble High Court of Andhra Pradesh in WP(PIL) 140 of 2022.

Objection No-4: As per the villagers, the trees aged more than 150 years cutdown in the first week of January' 2023 in Sy No. 452/2, Thogiri (R) in the presence of the Tahsildar, Saravakota (M)

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(K V SAINIVAS)

Objection No-5: The Apex Court observed that the tendering of affidavits and undertakings containing false statements would amount to contempt of court. However, there are sufficient and reasonable grounds for setting the machinery of criminal laws in motion for the offence of perjury and as per the Hon'ble High Court of Andhra Pradesh, the Andhra Pradesh High Court has the highest number of contempt cases because of the casual approach of officials towards court orders.

Objection No-6: The official members of the Joint Committee appointed by the Respondent No. 2 through his proceedings vide Rc No. 2176/2022/E1, dated: 21.02.2023 acted in the interest of the owner of the unauthorized building constructed in Sy No. 360 of Kummarigunta ® of Saravakota (M) and also acted to protect the Tahsildar of Saravakota (M).

Objection No-7: The Respondent No. 2 issued notice vide Rc No. 2176/2022/E1, dated: 28.03.2023. But the hearing, dated: 01.04.2023 was cancelled by Respondent No. 2 as well as Respondent No. 2 issued another notice vide Rc No. 2176/2022/E1, dated: 04.04.2023. But Respondent No. 2 did not participate in the hearing, dated: 07.04.2023 which is violation of this Hon'ble NGT, order, dated: 03.02.2023

PRAYER

a. It is hereby prayed that in view of order, dated: 25.01.2017 passed by Hon'ble NGT, Pune in Application No.125 of 2015, the Hon'ble Tribunal may be pleased to consider the additional objections against the final report, dated: 06.05.2023 (filed on 07.05.2023) by the Respondent No. 2 and may be pleased to take action against the Respondent No. 2 for the offence of perjury i.e false and misleading information provided by Respondent No. 2 to this Tribunal through his final report, dated: 06.05.2023 (filed on 07.05.2023)

b. Pass any such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case as well as in view of the

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judgment, dated: 14.09.2022 passed by the Hon'ble High Court of Andhra Pradesh in WP(PIL) 140 of 2022.

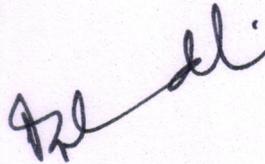

APPLICANT
(K V SRINIVAS)

VERIFICATION

I K.V. Srinivas, S/O (Late) Jagannatha Rao, Age: 56 Yrs, Occ: Doctor, O/O Door No. 58-14-87/2B, Marripalem, Vuda Colony, Visakhapatnam - 530018 do hereby verify that the contents of paras 1 to 10 believe to be true on legal advice and that I have not suppressed any material fact.

Date: 07/05/2023

Place: Hyderabad






APPLICANT
(K V SRINIVAS)

FURTHER REPORT FILED BY THE 2ND RESPONDENT THE DISTRICT COLLECTOR ON THE ORDERS DATED 27.04.2023 IN EXECUTION APPLICATION NO.02 OF 2023 (SZ) IN ORIGINAL APPLICATION NO.09 OF 2023 (SZ) OF THE HON'BLE NATIONAL GREEN TRIBUNAL, CHENNAI

1. It is submitted that, the application Forum for Social Justice & Anti Corruption (NGO) Rep.by its General Secretary, Door No.58-14-87/2B, Mairipalem, Vuda Colony, Visakhapatnam-530018 has filed an application O.A.No.9 of 2023 before the Hon'ble National Green Tribunal (SZ) Chennai and it is alleging that, since this Respondent is acting in the interest of grabbers by allowing constructions like private buildings in Sy.No.360 of Kummarigunta Village, Anganwadi Building in Sy.No.452-2 of Thogiri Revenue Village, cutting down 10 trees more than the age of 150 years etc., in Ralla Gutta (Hill Lock / Corridor Area) in Saravakota Mandal, Srikakulam District in the state of Andhra Pradesh in the name of construction of Anganwadi building is adversely affecting the ecosystem and the overall ecology of the area, and thus there is substantial question relating to environment, wherein the community at large is affected by the environmental consequences, which needs to be decided by this Hon'ble Tribunal.
2. It is submitted that, this Hon'ble Tribunal on 03.02.2023 has passed the following order in Para Nos.3 to 6 read as follows:
 - 3, Admittedly, the 10 number of trees have already been cut and removed from the said survey numbers and the photographs also revealed that some constructions are already been made.
 - 4, The only objection is that they should not have cut the trees and should not have allowed the private buildings to come up in the hillock area viz., 'Ralla Gutta'.

6. Let this exercise be completed within 4 (Four) weeks time and the compliance report may be filed by the District Collector – Srikakulam on 06.03.2023.” **(ANNEXURE-1)**

3. It is submitted that, after affording an opportunity of hearing to the applicant herein, appropriate orders have been passed and final report dated 16.04.2023 has been submitted to the Hon'ble Tribunal for kind perusal. **(ANNEXURE-2)**

4. The Hon'ble Tribunal has passed the following order on 27.04.2023 in the Execution Application No.02 of 2023 (SZ) in Original Application No.09 of 2023 (SZ). **(ANNEXURE-3)**

1. In the main application (O.A.No.09 of 2023 (SZ), the report of the 2nd respondent dated 26.04.2023 is filed. The applicant has also filed his objections to the above report.

2. At the request of the learned counsel appearing for respondents, post the matter on 08.05.2023.

5. In this connection, it is submitted that, pursuant to the above orders, the Tahsildar, Saravakota, who has been directed to enquire into the objections of the applicant, has reported vide in her report Rc.No.68/2023/A, Dt.06.05.2023 **(ANNEXURE-4)**, stating that,

(i) as per the directions issued by the District Collector (i/c), Srikakulam vide progs.Rc.No.2176/2022-E1/Dt.07.04.2023, awareness programme and Rally on APWALTA ACT-2002 (AP WATER, LAND AND TREES ACT) was conducted in Aludu village of Saravakota Mandal and created the awareness among the people about the above said Act.

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Gutta" in Aludu village, Thogiri revenue of Saravakota Mandal. And accordingly, they have given the enquiry report stating that, one Sri Kalingapatnam Gopal S/o Gurayya has cut down the four Tamarind trees near by the site which is allotted for construction of Anganwadi Building in Sy.No.452-2 classified as "Ralla Gutta" in Aludu village, Thogiri revenue of Saravakota Mandal. And hence, a notice has been issued to Sri Kalingapatnam Gopal S/o Gurayya vide in this office Rc.No.68/2023/A/dt.01.05.2023 calling his explanation.

(iii) Sri Kalingapatnam Gopal S/o Gurayya has given his explanation stating that, Govt sanctioned tree tax pattas for 9 Trees to his father Gurayya and for 3 Trees to him in the year 1988 vide Rc.No.33/88-B, Dt.28.3.1988 and these trees having thin canopy and foliage as they were damaged during Titli cyclone occurred previously and these four trees having old age and its branches are falling down across the way to SC street to Neyyala street and the trees touching the electrical line and giving obstruction to people to walk in that pathway and on the request of the Villagers and Village elders he cut down those four Tamarind trees without taking any permission from the Tahsildar or from Forest department and also said that, he cut down those trees for the public purpose, but not for his selfishness and he said that, he is not having awareness regarding AP WALTA ACT, 2002 and also cutting of trees is a punishable offence and also he said that, it is his first mistake and he never repeat it again and forgive him as he doesn't have awareness or idea regarding this.

amount of Rs.20,000/- vide CFMS Transaction ID: 70034375912023
(Challan), dated 06.05.2023. **(ANNEXURE-5)**

(v) as per this office directions, the above individual has planted 40
plants in the vacant place of Sy.No.452-2 of Aludu village of Saravakota
Mandal, Srikakulam District. (Photos of planting trees **ANNEXURE-6)**

In the above circumstances, it is humbly prayed that this Hon'ble Tribunal
may be pleased to record this report and dismiss the **O.A.No.9 of 2023** and
pass such further or other orders, as this Hon'ble Tribunal may deem fit and
proper in the facts and circumstances of the case and thus render justice.

Dated at **Srikakulam** on this the 6th day of May, 2023.


**District Collector,
Srikakulam.**

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI**HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE****&****HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU**

WRIT PETITION (PIL).Nos. 140 of 2022, 112 of 2016, 233 of 2020, 271 of 2020, 317 of 2020, 12 of 2021, 130 of 2021, 208 of 2021, 240 of 2021, 259 of 2021, 4 of 2022, 94 of 2022, 100 of 2022, 101 of 2022, 125 of 2022, 128 of 2022, 129 of 2022 & 133 of 2022; WRIT PETITION Nos.12511 of 2010, 9470 of 2010, 10778 of 2010, 25322 of 2011 & 29658 of 2011

(Through physical mode)

COMMON ORDER (ORAL)**Dt: 14.09.2022**

(per Prashant Kumar Mishra, CJ)

The issue brought before this Court in the present writ petitions filed in the nature of public interest litigation, is regarding the inaction of the State and its authorities in protecting the government lands of different classifications, viz., tank land/grama kantham/burial ground/forest land/road margin/play ground/cart track/hill poramboke/coastal areas/grazing land etc. Since the issue is common in all the writ petitions, they are heard together and are being disposed of by this common order.

2. At the outset, we make it clear that though the alleged encroachers of the subject government lands have been made parties to some of the writ petitions, we are not venturing into any independent allegations against any particular individual, and owing to the public interest involved, we would like

to examine the duty and responsibility of the State and its authorities in protecting the government lands from encroachments.

3. We have heard the learned counsel for the parties and perused the material available on record.

4. The issue of encroachment of government lands/public utility lands vested in the State, which are meant for common benefit of individuals, was considered in detail by the Hon'ble Supreme Court in **Jagpal Singh v. State of Punjab** reported in **(2011) 11 SCC 396**, while dealing with a case of encroachment of village pond. The Hon'ble Supreme Court noted that the appellants therein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat, and observed that such blatant illegalities must not be condoned and even if houses were constructed on the land in question by the encroachers, they must be ordered to be removed and possession of the land must be handed back to the Gram Panchayat. The Hon'ble Supreme Court further observed that regularization of such illegal constructions must not be permitted because the constructions were made on Gram Sabha land, which must be kept for common use of the villagers of the village, and that the Court cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years. In the above judgment, the Hon'ble Supreme Court referred to its earlier decision in **M.I. Builders (P) Ltd. v. Radhey**

Shyam Sahu reported in **1999 (6) SCC 464**, wherein restoration of a park after demolition of a shopping complex constructed at a cost of more than Rs.100 crores was ordered. The Hon'ble Supreme Court also referred to its another decision in **Friends Colony Development Committee v. State of Orissa** reported in **2004 (8) SCC 733**, wherein it was held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception, and observed that the said decision would apply to the cases of encroachment of village common land with even greater force. The Hon'ble Supreme Court further observed that compounding should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village. The Hon'ble Supreme Court lastly referred to its decision in **Hinch Lal Tiwari v. Kamala Devi** reported in **AIR 2001 SC 3215** (followed by the Madras High Court in **L. Krishnan v. State of Tamil Nadu [2005 (4) CTC 1 Madras]**), wherein the Court ordered the respondents therein to vacate the land recorded as a pond, which was illegally occupied by them, after taking away the material of the house constructed therein. The Hon'ble Supreme Court, having noted its earlier decisions referred to above, ultimately issued the following directions as contained in paragraph 22 of the judgment, which reads thus:

"22. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram

Sabha/Gram Panchayat/Poramboke/ Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

5. It is to be noted that pursuant to the aforesaid directions issued by the Hon'ble Supreme Court, the State Government of Andhra Pradesh framed the Andhra Pradesh Gram Panchayats (Protection of Property) Rules, 2011 (for short, 'the Rules of 2011'), notified vide G.O.Ms.No.188, Panchayat Raj & Rural Development (Pts.IV) Department, dated 21.07.2011. The said Rules provide for the procedure to be followed for protection of Gram Panchayat properties and eviction of encroachments. Under Rule 2 of the said Rules, the lands belonging to the Gram Panchayats have been classified into three categories, viz., (1) Category-A dealing with own and acquired properties, (2) Category-B dealing with gifts, donations, transfer of lands to Gram

Panchayats and (3) Category-C dealing with properties vested with Gram Panchayats. Rule 3 provides for the procedure to be followed for protection of Gram Panchayat properties, in that, the executive authority (Panchayat Secretary) of the Gram Panchayat is required to prepare inventory of landed properties of the Gram Panchayats based on FMB (Field Measurement Book)/ FSA (Field Survey Atlas) and field inspections and the District Collectors shall instruct the Tahsildars to provide the above information to the executive authority (Panchayat Secretary) and web based solutions may be evolved over a period of time to locate Gram Panchayat lands in the public domain. After obtaining the land inventory details, Grama Sabha shall be convened to validate the information and thereafter, a meeting shall be convened by the Gram Panchayat to discuss and approve the land inventory details by passing a resolution and any objections received shall be settled as per the recorded evidence and then, the land inventory details approved by the Gram Panchayat shall be published in the District Gazette. If any property of the Panchayat is under occupation of any persons, Rule 4 would provide for the procedure for eviction of such encroachments, as per which notice and opportunity of hearing shall be provided to the party concerned before proceeding for eviction. Thus, it is apparent that the scheme formulated by the Government is a self-contained code.

6. It is unfortunate to note that despite the directions of the Hon'ble Supreme Court in **Jagpal Singh** (supra) as noted above and despite framing

the Rules of 2011, no steps are taken by the authorities of the Gram Panchayat to protect the Gram Panchayat lands from encroachment, and similarly, no steps are being taken by the Government and its authorities in protecting the government lands, and this is evident from the fact that day in and day out, writ petitions are being filed before this Court, in the nature of public interest litigation, alleging inaction of the authorities of the State Government in protecting the government lands and removing the encroachments. As the public authorities are failing in their duties in protecting the government lands, which are meant for the common use of general public, despite bringing to their notice, public spirited persons are approaching this Court to intervene and direct the public authorities to protect the government lands from encroachments.

7. Considering the matter in its entirety and the significant public interest involved, we deem it appropriate to issue the following directions to the authorities:

(i) The executive authority, i.e., Panchayat Secretary, of the respective Gram Panchayats in the State shall identify the Gram Panchayat lands, which are unauthorizedly occupied/encroached, and take steps for removal of such encroachments by issuing notice and providing opportunity of hearing to the unauthorized occupants/encroachers in terms of the procedure prescribed in Rules of 2011. This complete exercise shall be done within a period of six months from today.

(ii) So far as the encroachments over the lands concerning the Municipalities/Forest Department/Revenue Department are concerned, even if no separate Rules have been framed prescribing the procedure to be followed in the matter of removal of encroachments over those lands, the officials of the concerned Departments, i.e., the Departments of Municipal Administration, Forest and Revenue, shall also undertake and complete the exercise of identification of unauthorized occupations/encroachments over the lands belonging to their respective Departments, within a period of two months from today, and thereafter, take steps for removal of such encroachments by following the principles of natural justice, i.e., issuing notice and providing opportunity of hearing to the unauthorized occupants/encroachers, within a further period of four months.

8. With the above directions, the writ petitions are allowed. No costs. Pending miscellaneous applications, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ

D.V.S.S. SOMAYAJULU, J

IBL

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

SHOW CAUSE NOTICE

IN

APPLICATION NO.125 OF 2015

(Decided on 25-01-2017)

CORAM:

HON'BLE U.D.SALVI
(JUDICIAL MEMBER)

HON'BLE PROF. (DR.) P.C.MISHRA,
(EXPERT MEMBER)

In the matter of:

1. KASHINATH JAIRAM SHETYE,

Son of Mr. Jairam Shetye,
Major of age, Indian national,
Having permanent residence at
A-102, Raj Excellency,
Patto Ribandar, Goa,
Mobile No.9420689997.

2444444, 2443333, 2444499, 2414242

Email: shetyebabu@yahoo.com

2. MR. KETAN GOVEKAR

Son of Santikar Govekar

Major of age, Indian national

3. SHRI SUDIP TAMANKAR

Son of Narayan Tamankar

Major of age, Indian national,

Having permanent residence at

C-5, Harbans Vihar,

Old Goa Kadamba Bypass Road

Near Saibaba Temple,

Ribandar, Goa

Occupation: Business

Tel (Mobile): 9552565679

4. Ms.SONIA SATERDEKAR

Daughter Dynaweshar Saterdekar

Major of age, Indian National.

Having permanent residence at

House No.605, Butki Wado

SUccoro Porvorim, Bardez, Goa

Occupation: Service,

Tel. (Mobile): 7030971520.

Email: soniasataradekar@gmail.com

.....**APPLICANTS**

VERSUS

1. JAIPRAKASH A. SHIRSAIKAR

308, Welcome rest
Chapora Bardez Goa
Pin Code-403 509.

2. ELIANO PEREIRA

Son of Pascol Pereira

Patto, Panaji Goa.
Pin code 403001.

4. THE DEPUTY COLLECTOR (BARDEZ),

Bardez, Goa
Mapusa Goa
Pin code 403507.

5. THE CHIEF TOWN PLANNER,

EDC Complex,
Dempo Towers, Patto
Panjim Goa.
Pin code-403001.

.....**RESPONDENTS**

Counsel for Applicant (s):

In person.

Counsel for Respondent (s):

Ms Shilpa Pratap, Varsha Waghole for Respondent No.1.

Mr Nitin Sardessai Sr. Advocate, Mr Vibhu Amonkar for Respondent No.2.

Mr. Pundalik V. Khorjuvekar, Dy Collector & SDM, Mapusa,

Mr. Madhu G. Narvekar (In person)

Mr. Fletcher Fernandez, Technical Officer, GCZMA (In person)

Fawia M. Mesquita, Madhu G. Marrekar, M.Fletcher Fernandez, Mr. Amogh V. Prabhudesai Addl. Govt Adv. Susan Linhares Costa, for Respondent Nos. 3,4.

Mr. Aurobindo G. Pereira, Mr. Raghavendra Kanankutkar for Respondent

1. While disposing of Application No.125 of 2015 initiated for directions to demolish remains of illegal structures in property bearing Survey Nos. 213/23-A of village Anjuna-Bardez, Goa, we issued Notices to

- 1.** Respondent No.2 Mr Eliano Pereira,
- 2.** Mr. Pundalik M. Khorjuvekar, Dy Collector and
SDM Mapusa,
- 3.** Mr.Madhu G. Narvekar, Mamlatdar of Bardez
Taluq Mapusa Goa and
- 4.** Mr. Fletcher Fernandez, Technical Officer,
GCZMA, Panaji,

to show-cause as to why prosecution under Section 193 and 219 of the Indian Penal Code, 1860 (IPC) should not be initiated against them.

2. The Noticees responded to the Notice with their respective replies and they were heard.

3. Acting upon the complaint filed by Respondent No.1 – Javprakash Shirsaiakar on 20th April, 2015 that construction

dated 5th May, 2015 was issued by GCZMA and upon considering reply of Respondent No.2 Eliano Pereira, an order of demolition dated 6th August, 2015 directing demolition of illegal construction of cottages located in the said property came to be passed. Respondent No.2 Eliano Pereira made a statement before the Tribunal in person that he had complied with the directions of GCZMA requiring demolition of structures vide order dated 13th August, 2015 in Application No.60 of 2015 (Mr. Jaiprakash A. Shirsakar Vs State of Goa & Ors). Applicant Mr. Jaiprakash A. Shirsakar, who was present in person made a statement through his Advocate Mr Kundaikar that he was satisfied with the compliance which Respondent No.2 Eliano Pereira herein declared before the Tribunal. In such circumstances, Application No.60 of 2015 was disposed of on the premise that nothing remained in the Application vide order dated 13th August, 2015. However, the Applicant in present Original Application No.125 of 2015 Mr. Kashinath Shetye moved the present Application seeking directions to Respondent No.3 GCZMA and Respondent No.4- Deputy Collector, Bardez to demolish remaining illegal structures in the said property. According to him, Respondent No.1 Jaiprakash A. Shirsakar and Respondent No.2 Eliano Pereira herein put up a show

regard disposed off. He pointed out that demolition of structures had not taken place and partial demolition occurred later on i.e. on 14th September, 2015 and this prompted Applicant No.1 Kashinath Shetye herein to move an Application dated 24th August, 2014 before Respondent NO.3-GCZMA complaining failure to demolish the said structures; and Respondent No.3 GCZMA thereupon had directed Respondent No.2 Eliano Pereira to demolish illegal cottages/structures located in the said property and restore the land to its original condition within seven (7) days vide order of 25th August, 2015; and failure on the part of Respondent No.2 Eliano Pereira to demolish cottages/structures, the Deputy Collector and SDM Mapusa-Bardez, Goa was to remove the said cottages/structures and recover expenses incurred for from Respondent No.2 Eliano Pereira.

4. Respondent No.1 Jaiprakash Sirsaikar contended before us in the present Application vide reply dated 7th December, 2015 that he was misled by the compliance report dated 10th August, 2015 filed by Respondent No.2 Eliano Pereira before Respondent No.3- GCZMA and was prompted to make a statement on 13th August, 2015 before the Tribunal that the directions dated 6th August, 2015 passed by

said directions and had therefore immediately complained to Respondent No.3-GCZMA and also initiated Application under Section 26 of the National Green Tribunal Act, 2010 (M.A.No.204 of 2015) and had also lodged complaint before the JMFC Court against Respondent No.2 Eliano Pereira as per liberty granted while disposing off M.A.No.204 of 2015.

5. Respondent No.2 Eliano Pereira filed reply dated 10th May, 2016 in the said Application. According to him, the staircase and structure of the restaurant, which was found existing even after the so called compliance order passed by GCZMA existed in the property since the time of his ancestors i.e., prior 1991 and other structures of temporary nature were demolished and dismantled. He further explained that only stones were used for levelling and mud-masonry work raised was plastered by concrete.

6. Respondent NO.3-GCZMA gave reply dated 15th March, 2016, wherein GCZMA besides placing the facts concerning entire course of proceedings, more particularly, made a reference to partial demolition of the structures on 14th September, 2015 and communication received from Respondent No.4-Deputy Collector, and SDM Bardez regarding demolition

were ordered to be demolished were actually and completely demolished or not?

8. This question was answered by us after hearing the parties and upon considering the record particularly the Commissioner's Report and replies of Respondent No.2 Eliano Pereira, both to the Show-cause Notice issued by GCZMA and the Application before us. We particularly noted that there was clear admission of fact by Respondent No.2 Eliano Pereira that he had inherited the said property as 'Bagayat' lands without any construction and in the year 2004-2005 he had to begin with temporary seasonal hut for tourism purposes. We also noticed that any cottage could be used as restaurant or inn, and restaurant which Respondent No.2 Eliano Pereira claims to be in existence prior to 1991 could not have been excluded from the order of demolition of the cottages referred to in the order dated 6th August, 2015. We particularly observed as follows:

“16. Significantly, what was ordered to be demolished vide direction/order dated 6th August 2015 were all cottages on the said property with no distinction being made as to its user. Nothing existed even going by his own (i.e. Respondent No.2 Eleino Pereira) showing prior to 2004-05 on the said property and the entire property was a garden (Bagayat)”.

investigation carried out by him revealed what was not demolished in the following terms:

“1. Two wooden sheds of restaurants having concrete base upto plinth level are not demolished. The furniture of restaurant like chairs, tables and other articles like refrigerator, fans etc. are lying there which can be seen in Photographs 1,3 to 8 & 16.

2. South-North hill cutting which has divided the disputed site into two parts i.e upper part and lower part are still as it is. The stair cases to approach the lower part of the disputed site are not demolished. The said hill cutting, two stair cases and the Southern & Northern compound walls are not demolished which can be seen in Photographs 2 & 9 to 15. The South-North hill cutting is not restored to its original position, which can be seen in those photographs.

3. The Northern compound wall and adjacent staircase to it in disputed site are not demolished which can be seen in Photograph 11.

4. The cottages are demolished/removed but the concrete/paka structure upto the plinth level and the flooring of cottages as well as restaurant basement are not demolished/removed which can be seen in Photographs 5,7 to 13 & 19.

5. Paka/concrete structure of the Eastern, Western and other compound walls upto the plinth level is not demolished which can be seen in Photographs 2 & 17 to 19”.

10. Palpably we had reason to believe that Respondent

8th December, 2015, which recorded full compliance of the order of GCZMA on removal of cottages/structures. We are *prima facie* of the view that there was material to proceed against the said Public servants for the commission of offence under Section 219 of IPC. Show-cause notice as aforesaid to the concerned Notices were therefore issued vide order dated 25th January, 2017.

11. Show-cause Notice was responded to by Noticees with their respective affidavit in replies, namely; affidavit in reply dated 20th February, 2017 of Respondent Nos. 3 and 4, affidavit in reply dated 9th March 2017 of Respondent No.2 Eliano Pereira, affidavit in reply dated 28th February, 2017 of Mr. Fletcher Fernandez, Technical Officer, GCZMA, Panaji. Replies were rejoined by the Applicant with his rejoinder dated 22nd March, 2017. Respondent No.2 Eliano Pereira reserved his right to file further detailed affidavit in reply on 10 March, 2017. However, he did not file any further reply. We have considered the entire record including these replies and heard parties.

12. Learned Counsel appearing on behalf of Respondent No.3 GCZMA submitted that the order dated 6th August, 2015 of demolition of illegal cottages/structures standing on Survey

cottages/structures issued in wake of the complaint made by Applicant Mr. Kashinath Shetye that the directions of GCZMA dated 6th August, 2015 were not complied with as represented before us on 13th August, 2015 reiterated the order of demolition of cottages and structures on the said property. She submits that all throughout the proceedings beginning with the complaint dated 20th April, 2015 of Respondent No.1 Jaiprakash Shirsaiakar till issuance of the order of demolition lastly being 25th August, 2015 GCZMA had not carried out any site inspection of the said property and had merely considered the record including requests of Respondent No.2 Eliano Pereira and passed the orders. In such circumstances, she submitted that there existed a room for bonafide error in reading of the demolition order. Taking a cue from these submissions, Mr Khorjuvekar then Deputy Collector and SDM Mapusa and Mr. Narvekar, Mamletdar, the Members of demolition squad which carried out demolition of the structures on 8.12.2015 submitted that they had called for assistance of GCZMA in identifying the structures to be demolished and it was Mr. Fletcher Fernandez, Technical Officer of GCZMA, who had instructed them and Respondent No.2 Eliano Pereira the owner of the cottages had made statement that all the

report of compliance of the GCZMA directions as per communication dated 10th December, 2015 addressed to GCZMA.

13. Learned Counsel appearing on behalf of Respondent No.2 Eliano Pereira submitted that Respondent No.2 Eliano Pereira had filed compliance report dated 10th August, 2015 and asked for permission to erect temporary huts in his private property; and Respondent No.2 Eliano Pereira had not made any false statement before the Tribunal on 13th August, 2015; and on appreciation of facts, this Tribunal is of the opinion that a false statement was made by him such statement has never been made intentionally and was result of inadvertence and/or misconstruction of the terms of the order. Pertinently, the order dated 6th August, 2015 in unequivocal terms made record of the facts as under:

“AND WHEREAS, taking into consideration the Complaint filed by Mr. Jaiprakash Sirsaikar, and the documents annexed to it and the Judgment dated 17/12/2014 passed in Application No.03/2014, it is seen/noted that all the structures/cottages constructed by hill cutting are in violation of CRZ Notification, 1991/2011 and do not possess prior permission under the Notification. As such, it is concluded

Eliano Pereira, and accordingly file a compliance report to the office of GCZMA”.

14. There was therefore, no reason to misconstrue the Order dated 6.8.2015. Moreover, Respondent No.2 Eliano Pereira defended undemolished structures by contending that said structures existed prior to 1991 and we have dealt with the said contention adequately and overruled it with our findings in the Judgment passed in Application No.125 of 2015 dated 27th January, 2017. This only shows that Respondent No.2 Eliano Pereira who was in complete know of the facts about construction raised on the said land had deliberately made a false statement before us on 13th August, 2015 saying that the directions passed by GCZMA for demolition of structures were complied with.

15. Learned Counsel appearing on behalf of Respondent No.2 Eliano Pereira relied upon the Judgment of Hon'ble Apex Court delivered in **Mutha Karuppan's Case, [(2011)5 SCC 496 : Mutha Karuppan, Commissioner of Police Chennai Vs Parthi Ilamvazhuthi and Anr]** and **Dr. S. P. Kohli's case [(1979) 1 SCC 212 : Dr. S.P.Kohli, Civil Surgeon, Ferozpur Vs High Court of Punjab & Haryana, through Registrar.]**

He submitted that before commencing prosecution for giving

statement, and more so, the Court has to determine on facts whether it is expedient in the interest of justice to enquire into an offence which appears to have been committed. He invited our attention to paras-15 and 16 of the Judgment delivered by the Hon'ble Apex Court in Muthu Karuppan's case (Supra) in that regard. He added that the prosecution for perjury should be sanctioned by the Courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely, and invited our attention to the observations of Hon'ble Apex Court made at para 16 and 17 of the Judgment delivered in Dr. S.P.Kohli's case in that regard. We humbly bow down to the observations made by the Hon'ble Apex Court in the aforesaid cases. However, from the facts before us it is very much clear that Respondent No.2 Eliano Pereira had made deliberate and conscious statement about demolition of the structures/cottages on the said landed property on 13th August, 2015 when he knew that all the structures were not demolished. The existence of structures became evident with the Commissioner's Report dated 18th February, 2016. Obviously, Respondent No.2 Eliano Pereira made a false statement before us on 13th August, 2015. In the given facts and circumstances, we reject the plea of Respondent

an offence of perjury committed by Respondent No.2 Eliano Pereira.

16. In our considered opinion therefore there are sufficient and reasonable grounds for setting the machinery of criminal law in motion for the offence of perjury committed by Respondent No.2 Eliano Pereira and we have reason to believe that trial of Respondent No.2 Eliano Pereira will end in dispensing justice not only to Respondent No.2 Eliano Pereira but also to all the concerned in the present case. However, in the given facts and circumstances, we accept the plea of Mr. Pundalik M. Khorjuvekar, Dy Collector and SDM Mapusa, Mr.Madhu G. Narvekar, Mamlatdar of Bardez Taluq Mapusa Goa and Mr. Fletcher Fernandez, Technical Officer, GCZMA, Panaji.

17. Rule 24 of the National Green Tribunal (Practices & Procedure) Rules, 2011 enables us to pass such orders or give such directions as may be necessary to give effect to its order to secure the ends of justice. It is therefore necessary to direct State of Goa to give all such legal, ministerial and logistical assistance as may be felt necessary by our Registrar to initiate prosecution against Respondent No.2 Eliano Pereira for

1. Sanction is granted to prosecute Respondent No.2 Eliano Pereira for the commission of offence punishable under Section 193 of the Indian Penal Code, 1860 as aforesaid.
2. Registrar is directed to initiate prosecution against Respondent No.2 Eliano Pereira for having committed an offence punishable under Section 193 of the Indian Penal Code, 1860, as observed herein above and pursue the same to its logical end.
3. State of Goa is directed to give all legal, ministerial and logistical assistance to the Registrar, (WZB) NGT at Pune as may be felt necessary by him to give effect to this order.
4. Respondent No.2 Eliano Pereira is liable to bear expenses incurred by the State of Goa for giving necessary assistance as directed and State of Goa shall recover the said expenses incurred from Respondent No.2 Eliano Pereira as arrears of land revenue.

.....JM
(Justice U.D. Salvi)



DV Rao <dvraofile@gmail.com>

Addl Objections in OA 9 of 2023 -reg

1 message

DV Rao <dvraofile@gmail.com>

Sun, May 7, 2023 at 11:30 PM

To: cs@ap.gov.in, collector.sklm@gmail.com, collector_sklm@ap.gov.in

PFA

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