

**REJOINDER BY THE JOINT COMMITTEE TO THE OBJECTIONS FILED BY THE APPLICANT ON THE REPORT OF THE JOINT COMMITTEE.**

Para 1,2 & 3 – no comments

Para 4.

At the outset the report is in the fashion of a counter affidavit filed by the Respondent, for the allegation of illegal construction of a football ground in the reserve forest. The response submitted, are para-wise remarks to the main application. Though there is clear violation of Kerala Forest Act, Forest Conservation Act, Wildlife Protection Act and The Forest Rights Act, the committee had miserably failed to note the serious violations and answer the question, whether the impugned construction was done after obtaining proper prior permissions, The report had failed to observe a direct answer to the question, whether the authorities who were bound to protect the Forest and Wildlife had failed in discharging their duties or not.

*The Joint Committee has examined the facts that were set as its mandate by the Hon'ble Tribunal. The report was prepared after conducting field inspection, perusing all the relevant records and discussions with the concerned persons. There is no merit in the objection raised by the petitioner.*

Para 5.

Before raising the objections to the said report, it is necessary to highlight the prima-facie observations found in the said report.

- A. Existence of a playground, of 3694 Sq' m (39,762 sq'ft), inside the reserve forest.
- B. The impugned site was filled with-silt and natural resources, even during 2018 and 2019
- C. New surface dressing, for setting up a playground, using heavy machineries which shall severely damage the ecology

*The Joint Committee has observed that “Considering the extent of the play ground, it is **highly unlikely** that the quantum of earth accumulated/moved during the levelling exercise would cause “severe damage' to the ecology of the forest”. Hence, there is no merit in the objections raised in this para.*

Para 6.

It is erroneous to state that there is no football ground as per specification. The authorities should have understood that the allegation was not an existence of an international football stadium. The report is well drafted, in a polished manner and projected the factual situation in a lighter way. The committee had failed to measure the quantum of earth moved and where the same was moved and sold. The question is unanswered in environmental aspect.

*As mentioned clearly under points 2 & 4 of the summary of the report by the Joint Committee, the area of the ground where the surface restoration was done is clearly given. As per the findings of the Joint Committee, no earth is found moved and sold out. Neither the petitioner nor*

*anyone else has given any proof showing that the earth was moved out or sold. There is no merit in the objections raised in this para.*

Para 7.

The committee had failed to investigate or observe the fact that a, three days football tournament was conducted in the impugned ground, illegally in December, 2019. Wherein the same was inaugurated by the Deputy Director using public addressing system, photo of inauguration by Deputy Director is herewith annexed as annexure no.1. The notice of football tournament is produced as annexure 2.

*This is a fresh point that was not mentioned in the Original Application by the petitioner. However, the Government Order delineating the Buffer Zone of Periyar Tiger Reserve and the Micro Plan of Vanchivayal EDC have provided for the tribals to conduct cultural, customary and common gathering activities within the buffer area. Hence, there is no merit in the objections in the para.*

Para 8.

Though the report is in a fashion of para-wise remarks, it has failed to disclose the observations of the vigilance report on the subject issue. Further the report had even surpassed the existence of the presence of a report of Conservator of Forest. I and E, Kottayam. The same is produced as annexure no. 3. The recommendation of the above report by The Additional PCCF Vigilance is produced as annexure 4.

*The existence of any such report from any officer was not mentioned in the Original Application by the petitioner. Nor did the petitioner produce any such document before the Joint Committee. The petitioner is coming up with new documents which cannot be entertained and brought under the purview of the Joint Committee inspections later at this stage. It appears that the reports relied upon by the petitioner has been obtained through RTI. The State Information Commission (SIC) of Kerala has given an order No 110(6)/2020/SIC dated 23/6/2020 that it is legally invalid to obtain an enquiry report before it is finalized by the concerned authorities and SIC has given the orders for proceeding with departmental actions against the Conservator of Forest I&E, Kottayam for leaking out/ publishing the incomplete enquiry report. The order of State Information Commission is attached as **annexure**. In view of the above, it would be legally untenable to take cognizance of such reports and there is no merit in the objections raised by the petitioner.*

Para 9.

The report had failed to observe the impact of the illegal ground construction, using heavy machineries. The photographs produced by the Committee, even, clearly highlights the construction, earth cutting and filling. The Committee had carefully used the words as "New surface dressing", to dilute the issue. No measurement of earth cutting and filling is taken. Instead of taking measurements and complete photographs and video, Google maps are produced to mask the illegalities visible with naked eyes. Many annexures are produced by the Committee but they cleverly avoided the Vigilance reports. Though the work was done without

any authority and it is illegal, the authorities had later tried to regularize under developmental rights, which cannot be done post-facto. Further the rights under the section 3(2) of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, does not cover the nature of work executed, without permission.

*The Joint Committee has examined the facts that were set as its mandate by the Hon'ble Tribunal. The report was prepared after conducting field inspection, perusing all the relevant records and discussions with the concerned persons. There is no merit in the objection raised by the petitioner.*

Para 10.

Though the report says that the impugned area is in buffer zone, the committee had failed to produce the revenue records or Government Orders for the Core and Buffer Zone classification. The GO (P) No.7512007 F and WLD Thiruvananthapuram dated 31.12.2007, about Core area of PTR, copy is produced as annexure 5. The GO (P) No.18/2011 F and WLD Thiruvananthapuram dated 22.03.2011; about Buffer area of PTR, copy is produced annexure 6.

*The Joint Committee has thoroughly verified the maps, cross checked imageries over various years, examined files & documents and cross verified all these with the final GOs. It has been established beyond doubt that the said area falls in the Buffer Zone of Periyar Tiger Reserve and it was annexed to the report for reference. Hence, the objections raised in this para are devoid of any merit.*

Para 11.

The Annexure III, map, filed along the report is incorrect. The approved conservation Plan, Locations of Meteorological Stations, is produced as annexure 7. It shall clearly shows the Vanchivayal Colony in three bits and the road is in the Buffer area and rest of the adjoining area as the Core area. Further the copy of the map from the approved Conservation Plan, Distribution of Vayals, is produced as annexure 8. Here also the Colony in three bits and the road are in the Buffer and adjoining areas are in the Core. The copy of the map from the approved Conservation Plan, core or Critical Tiger Habitat and Buffer Zone, is produced as annexure 9, Even this should show that the Colony are in three bits and the road are only in the Buffer and adjoining areas are in the Core.

*The Joint Committee has thoroughly verified the maps, cross checked imageries over various years, examined files & documents and cross verified all these with the final GOs. It is established beyond any doubt that the said area falls in the Buffer Zone of Periyar Tiger Reserve. Findings of the committee mentioned in its report and reply to Paras 6&7 is reproduced here for reference*

*The Deputy Director stated that the said ground is part and parcel of the Vanchivayal Tribal Settlement and it has been included in the Buffer Area of the Tiger Reserve in the notification of the Govt. of Kerala dated 06.04.2011. The committee perused the documents related to the notification of the Buffer Zone of the Periyar Tiger Reserve. Vanchivayal tribal settlement along with 400 meter distance from its periphery is included in the buffer zone of Periyar Tiger Reserve as indicated in the proposal initiated by the Field Director for notification of the PTR*

*Buffer. The Deputy Director submitted a map showing the Tribal settlement along with 400 meter buffer area showing the location of the ground (Annexure- III). The extent of area included in the buffer zone was verified from the proposal of the Buffer Area sent by the Field Director (Annexure-IV), the proposal of the PCCF & Chief Wildlife Warden for declaration of the Buffer Zone of PTR sent to the government (Annexure V) as well as the Government Order dated 06.04.2011 Page 4 published in the Government gazette (Annexure- VI). All maps annexed as Annexure VII.*

*Hence, the objections raised by the petitioner are devoid of any merit.*

Para 12.

It is necessary to say that, as per the notification the Vanchivayal colony and the approach road to the colony are in Buffer, but the ground in question is outside colony and is located in the Core area. Colony in three bits means that the land in between the bits are not part of colony. Individual rights are settled and the bits are well demarcated. They have no right in the adjoining Forest lands. The construction is, any day, a non permissible activity.

*Same as response to the Para 11 above*

Para 13.

The report had failed to say to the Hon'ble tribunal that the Diversion of Forest land for developmental right should be as per, GOI letter dated May 18,2009 No.23011/15/2008-sG'll copy is produced as annexure 10. No procedures were followed by the authorities for establishment of the impugned ground and the report had failed to even observe that the Eco Development Committee (EDC), is not a competent user agency for submitting the Form A application. There is no quorum for the Grama sabha and is a clear indication that it is an afterthought. The copy of RTI application given to Vandiperiyar Panchayath Secretary is produced as annexure 11. Copy of reply to RTI application given by panchayath Secretary is produced as annexure 12. Further the photographs of the area before construction, during construction and after construction are produced as annexure 13 which clearly depicts the illegal construction,

*Upon perusing the documents, the Joint Committee has found that the process of claiming developmental right for the maintenance of the ooru maidanam was initiated since 2017. There is a well stipulated mechanism at Sub Divisional, District and State Level in this regard. Hence, the objections raised by the petitioner are devoid of any merit.*

Para 14.

The report had failed to observe that the activity carried is in violation of Gol direction, Forest Act, Forest Conservation Act, Wildlife Protection Act and Forest Rights Act.

*The Joint Committee has examined the facts that were set as its mandate by the Hon'ble Tribunal. The report was prepared after conducting field inspection, perusing all the relevant records and discussions with the concerned persons. There is no merit in the objection raised by the petitioner.*

Para 15.

The committee failed to report the attack on a Beat Forest officer Sujith from vigilance wing who came for collecting information about the illegal construction by the colony members and staff of Periyar Tiger Reserve, there is a police case in this incident. FIR No.68,/2020 dated 26.01.2020 in Vandiperiyar police station. copy is produced as annexure 14. Moopan T. Ajayan along with 2 permanent watchers and 2 daily wages watchers of Periyar Tiger Reserve were arrested on 16.09.2020 by police and got remanded in Judicial custody. Further a false petition was given in vandiperiyar polite Station against Beat Forest officer Sujith by the colony Moopan T. Ajayan, FtR GGI2020 dated ZS|OL|2OIO and the case is proved false, Copy of report is produced as annexure 15. The very same T. Ajayan has filed an impleading petition in the oA under the instigation of delinquent officers. After filing the OA, Moopan Ajayan gave a false petition to DySp Kattappana against the applicant under the instigation of delinquent officers. The petition was enquired by police and found false.

*This matter doesn't come under the purview of the mandate given by the Hon'ble Tribunal to Joint Committee.*

Para 16.

It is necessary to state that the land in question is well outside the demarcated colony and the committee is misleading the Tribunal by reporting that land outside colony is part of colony. The colony in three bits means in between area is not part of colony. Committee suppressed the fact that colony is demarcated with permanent cairns (Jundas). Further the said land is not a community Forest Resource as defined in section 2(a) of the Tribal Act, further they have not applied for the title of the said land in form C and obtained the title in Annexure IV of the Act.

*The Joint Committee has thoroughly verified the maps, cross checked imageries over various years, examined files & documents and cross verified all these with the final GOs. It is established beyond any doubt that the said area falls in the Buffer Zone of Periyar Tiger Reserve and annexed to the report for reference. Hence, the objections raised in this para are devoid of any merit*

Para 17.

The committee had failed to answer, whether the Eco Development committee (EDC) had violated the Forest Act, Forest conservation Act, wildlife protection Act and Forest Rights Act. where a part of the Forest area was converted to a ground and foot ball tournament was conducted illegally. Neither the delinquent officers nor the committee members had submitted the Tribunal, about the importance of the impugned area, which is located inside the Forest.

*The Joint Committee has thoroughly verified the maps, cross checked imageries over various years, examined files & documents and cross verified all these with the final GOs. It is established beyond any doubt that the said area falls in the Buffer Zone of Periyar Tiger Reserve. Moreover, the Wildlife (Protection) Act, 1972, the Forest Rights Act, 2006, the Government Order delineating the Buffer Zone of Periyar Tiger Reserve and the Micro Plan of Vanchivayal EDC have provided for the tribals to conduct cultural, customary and common gathering activities within the Buffer Zone. Hence, there is no merit in the objections raised in this para.*

18. The committee had failed to say this Hon'ble Tribunal that no responsible officials had initiated any action for the gross violation of Act and Rules. The chief wildlife warden who is the statutory authority under Wildlife Protection Act had also been silent on the violation and now the officials are trying to protect themselves under the umbrella of \_\_\_\_\_

*The Joint Committee has thoroughly verified the maps, cross checked imageries over various years, examined files & documents and cross verified all these with the final GOs. There is no merit in the objections raised in this para.*

19. The committee had blatantly tried to divert the subject by targeting the Applicant personally.

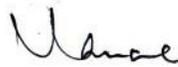
*The committee had no intention of targeting the petitioner personally. One of the respondents Mrs.Silpa V Kumar, Deputy Director, Periyar Tiger Reserve (East) had submitted a written statement saying that the petitioner was harassing her with sexually over-toned remarks and court case filed by her against the petitioner in this regard is under trial with the court of law. As clearly mentioned in the report, this statement as submitted by her was included in the Report as natural justice of being heard. There is no merit in the objections raised by the petitioner in this regard.*

Date: 21.01.2021

Sd/-  
(Surendra Kumar)

Sd/-  
(H Dineshan)

Sd/-  
(Eby Verghese)

  
(N S Murali)