

Filed on: 06.10.2021

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SZ) CHENNAI**

MEMORANDUM OF ORIGINAL APPLICATION

(Under Section 18(1) read with Sections 14, 15 of National Green
Tribunal Act 2010)

APPLICATION No. 10 OF 2021

BETWEEN

PHINTO P.A & ANR..... **APPLICANTS**

Versus

UNION OF INDIA & ORS.....**RESPONDENTS**

**REJOINDER FILED AGAINST THE REPLY AFFIDAVIT FILED BY THE 6th
RESPONDENT**

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Date: 02.10.2021

Place: Kochi



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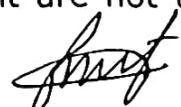
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RESPONDENT**

I, Phinto P.A, aged 31 years, S/o Aippu, Residing at Panokaran House, Ombathungal, P.O Mattathur, Thrissur district, Kerala - 680684, do hereby solemnly affirm and state:

1. I am the 1st applicant in the abovementioned memorandum of original application and as such am conversant with the facts and circumstances of the case and am competent to swear to this affidavit on behalf of the 2nd applicant also. I submit that I have read the reply affidavits filed on behalf of the 6th respondent. I wish to deny all the contents of the same as false, except to the extent expressly admitted to hereunder. Without prejudice to the generality of the above denial, the following rejoinder is tendered.
2. The applicants herein reserve the right to file a detailed rejoinder affidavit against the reply affidavit filed by the 6th respondent, bringing more facts to prove the case of the applicants before this Hon'ble Tribunal. Applicants are filing this rejoinder as a preliminary rejoinder against the reply affidavit filed by the 6th respondent.
3. It is submitted that the averments and allegations raised by the 6th respondent in Paragraphs No. 3 to 5 of the reply affidavit are not true



and denied. The averment that the application is not maintainable on the ground that an appeal was not preferred against the EC granted is not tenable in the eye of law and hence denied. The meritorious challenge against the EC and the cancellation of EC based on the ground of deliberate suppression of material facts are totally different all together. As per Para 8(vi) of the EIA Notification, 2006, it does not stipulate any time limit for cancellation of the EC on the ground of clearances obtained by deliberate submission of false or misleading information which is material to the appraisal. It is not the option of the regulatory authority whether to cancel the clearance once the deliberate suppression of material facts have been noticed, but is mandatory. The fraud committed by the proponent in the EIA process vitiates the entire process and can be raised at any point of time. It is pertinent to note that none for the prayers sought in this application seeks for the cancellation of EC already granted. It is only the fanciful imagination of the 6th respondent that the applicants have sought for the cancellation/ setting aside of the EC. Moreover, the 6th Respondent is aware of this legal principle when signing the Form-1 as there is a clear statutory undertaking in this regard. The crux of the argument of this original application is the violation of the statutory provision in the Forest (Conservation) Act, 1980 (hereinafter will be referred as FC Act) on the ground of getting an EC by suppressing material facts. In other words, the mining being conducted in violation of the FC Act by using an EC obtained fraudulently is the cause of action of this application. This is well within the jurisdiction of the NGT and hence the application is maintainable. The 6th respondent is trying to create a misunderstanding before this Hon'ble Tribunal by stating that the applicants have challenged the EC granted, only to divert the attention of this Tribunal from the real facts.

4. The essential contention in the application is the implementation of specific condition No. 3 in the EC. Forest (Conservation) Act imposes a statutory bar on the 6th respondent to conduct any mining activity in the forest land without obtaining prior clearance under section 2 of the said Act. Condition No. 3 in the EC prescribes a specific duty on the 6th respondent to obtain prior forest clearance to conduct mining in the forest land. The question now being raised before this Tribunal is regarding the implementation of condition No. 3 of the EC and implementation of Section 2 of the Forest (Conservation) Act. The argument that the applicants were aware of Annexure A5 dated

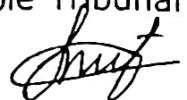


24.04.2014 in the year 2014 itself is not true and denied. This is subject to the strict proof by the 6th respondent. The applicants' case is that the 6th respondent is conducting mining operations in forest land without forest clearance and they had come to know of this information only through Annexure A6 as stated in the application and this is not disproved by the 6th respondent.

5. The averments and allegations raised by the 6th respondent that the applicant have not stated the nature of pollution caused due to the working of the industry and is therefore limited to the challenge of statutory licenses is false and denied. The non-obtaining of statutory clearance is the crux and cause of action of this case and will fall within Sections 14 and 15 of the NGT Act and hence within jurisdiction of this Hon'ble Tribunal. The case in hand clearly indicates a substantial question relating to environment and implementation of the enactments in schedule 1 of the NGT Act. As per the report and additional report filed by the Committee constituted by the NGT, it satisfies a clear jurisdiction and duty on NGT to stop illegal mining in forest lands, in violation of FC Act. Moreover, the 6th respondent did not specifically deny Ground N of the application and therefore it is a continuing cause of action, where the Tribunal has ample power to exercise its jurisdiction.
6. The averment that this Tribunal has no power to decide the legal status of a land in question as to whether it will include in the definition of 'forest' for the purpose of implementation of the Forest (Conservation) Act is false and hence denied. Implementation of the Forest (Conservation) Act is well within the power, scope and ambit of the NGT Act. To determine the legal status of a land whether it is forest or not for the purpose of the implementation of the Forest (Conservation) Act, 1980 is rather a statutory duty of the NGT and well within its jurisdiction. To ascertain the facts and law in cases in hand, the NGT can go through the provision of any Act, Rule, Notification other than the enactments in the Schedule I of the NGT Act is also a well settled principle by the Hon'ble Supreme Court. The question of law as to whether the lands assigned under the Land Assignment (*regularisation of occupation of forest lands prior to 01.01.1977*) Special Rules, 1993 for the purpose of implementation of the Forest (Conservation) Act is a settled position of law in the judgment reported In 2018(4) KHC 827 and this Tribunal need not ask for the implementation of these Rules.



7. The allegation that the applicants through this application have challenged the title conferred on the pattadars by the State of Kerala is false and hence denied. There is no challenge made by the applicants in the present case on the title of the lands in question. The provisions of FC Act will act on any forest land, irrespective of its ownership and there is no need to question the ownership of the land.
8. The averment that the applicants are challenging interpretation of non-forest activity as defined in Kerala Land Assignment (*regularisation of occupation of forest lands prior to 01.01.1977*) Special Rules, 1993 is false and hence denied. The argument that the judgment in 2019(2) KLT 978 is challenged by way of a writ appeal and therefore it cannot be relied upon is unsustainable and hence denied.
9. The cause of action of the application is knowledge of the illegality being committed by the 6th respondent vide Annexure A6 as stated in the Original Application. The allegation that the applicants and their friends have filed WPC No. 24806 of 2019 is absolutely false and denied. None of the applicants herein have filed any writ petition before the Hon'ble High Court regarding the cause of action in hand. The 6th respondent is trying to mislead this Hon'ble Tribunal by bringing information of all the pending matters with respect to his illegal quarrying to this case. The allegation that the 1st applicant had signed the document in Exhibit P13 in WPC No. 24806 of 2019 and had raised these issues is not true and denied. The applicants submit that there is not even a whisper of allegations regarding the violations of the Forest (Conservation) Act in the said document and that the same was regard to other issues relating to Disaster Management and has no relevance to the issues raised in the present case.
10. Annexures R6-10, R6-11, R6-12 and R6-13 have nothing to do with the issues raised in the application and all the allegations in contrary to the same are false and hence denied. Annexures R6-14 and R6-15 have no relevance with the present case and are with regard to the issue as to whether NOC is required from the DFO. Since none of the applicants are party to the proceedings in Annexures R6-14 and R6-15, it is not binding to the applicants herein. The argument that the pendency of Annexure R6-12 before the Hon'ble High Court and therefore this Hon'ble Tribunal



should not pass any orders is not sustainable. First of all, the Hon'ble High Court is not directly superior to the NGT on the issue of implementation of Forest (Conservation) Act. The law commission report suggests that NGT must be provided with power to deal with matters dealt by the High Courts, and therefore, the Parliament, purposefully enacted NGT Act giving provisions of appeal only to Supreme Court. Secondly, the mere pendency of any matter before any of the Superior Courts will not be a bar for the lower Forums to interfere with the same subject matter until final disposal of such case by the apex forum. Especially when there is a requirement of applying precautionary principle. Time and again the Hon'ble Supreme Court has stressed that the pendency of any matter before the Supreme Court will not bar the High Courts from exercising their jurisdiction in the matter. Thirdly and most importantly, the facts and question of law raised in this application is not the subject matter of the High Court in any of the pending matters. The pending dispute before the High Court is not between the same parties also, as evident from the records. The challenge against the issuance of stop memo by the DFO of Forest Department, on the ground of non-hearing of parties is a different cause of action altogether. Mere pendency or stay of such proceedings before any superior courts will not confer any rights for the 6th Respondent to violate condition No.3 of the EC and provisions of FC Act. Those proceedings cannot be argued as a bar of jurisdiction of NGT in settling disputes between different parties arising out of the implementation of statute mentioned in Schedule 1 of the NGT Act. Therefore on the abovementioned points, all the averments and allegations in Paragraph No. 5 are not true, stoutly denied and are liable to be rejected.

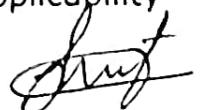
11. It is submitted that the averments and allegations raised by the 6th respondent in Paragraphs No. 6 to 8 of the reply affidavit are not true and denied. It is clearly stated in the assignment that the assignee shall reside or cultivate in the assigned land and is a condition binding upon the 6th respondent. Condition No. 15 of the patta only states that the assignee have no rights over the mines and quarries subjacent to the said land. Even If the Government want to start a mining activity in the forest land, they have to obtain clearance under Section 2 of the Forest (Conservation) Act. The averment raised by the 6th respondent that the lands were possessed by the Revenue Department and procured by various pattadars on the strength of assignment deeds prior to the



commencement of the Forest (Conservation) Act, 1980 and thus makes Forest (Conservation) Act inapplicable to the said lands is untenable and stoutly denied. Mere transfer of forest land to any department or issuance of patta in the said lands will not take away the rigor of Section 2 of the Forest (Conservation) Act and this is a settled position of law. Merely because the land assignment happened prior to 25.10.1980, will not alter the rigor of Section 2 of the Forest (Conservation) Act to the said lands. All the officials who were duty bound to stop the illegal mining of the 6th respondent were facilitating the 6th respondent. This will not confer any right on the 6th respondent to continue his illegality. Once the land is notified as forest land, unless it is de-reserved as per the provisions of the Forest (Conservation) Act, the legal status of the land remains to be forest as per the definition given by the Apex Court in WPC No. 202/ 1995. Hence, all the averments in Paragraph No. 8 are totally incorrect and denied.

12. It is submitted that the averments and allegations raised by the 6th respondent in Paragraphs No. 9 and 10 of the reply affidavit are not true and denied. It is pertinent to note that the 6th respondent did not deny the existence of Annexure A4 notification and question the legal validity of the same. The specific case of the applicants herein that the land in question is covered by Annexure A4 notification notifying as forest land. This is not specifically denied by the 6th respondent and is to be considered as an accepted fact. Therefore, the 6th respondent is barred from raising the contention that the land in question is not a forest land for the purpose of Section 2 of the Forest (Conservation) Act, atleast in this proceeding. The committee consists of all stakeholders from various departments have categorically found that the mining activity being conducted by the 6th Respondent is a violation of the provisions of FC Act.

13. In this context it is to be noted the committee constituted by the Hon'ble Tribunal including the officials from the Forest department, Revenue, Mining and Geology Departments have filed a report and additional report which categorically found that the land in question is described as forest land in the Government records including the working plan of the Forest Department and the said land is not de-reserved yet even though the applicants have objections regarding the averments in the report and additional reports filed by the Committee with respect to the applicability



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of Rule under which the land has been assigned, it is irrelevant for the purpose of the implementation of the provisions of the Forest (Conservation) Act as the said land is still recorded as forest in the Government records. Going by the definition of 'forest' as determined by the Apex Court in Godavarman Thirumulppad Vs Union of India and Ors, any land described as forest in the government records shall be considered as forest for the purpose of FC Act, irrespective of its ownership.

14. The simple and essential question in this application is, whether mining can be permitted in a land recorded as forest in the Working Plan of Forest Department, without obtaining prior clearance under S.2 of the FC Act, and in violation of specific condition No.3 of the EC granted.
15. Therefore, all the contention raised by the 6th respondent in their reply affidavit is liable to be discarded and the application may be allowed in the interest of justice, equity and good conscience.



COUNSEL FOR THE APPLICANTS



SIGNATURE OF APPLICANTS

VERIFICATION

We, Phinto P.A, aged 31 years, S/o Aippu, Residing at Panokaran House, Ombathungal, P.O Mattathur, Thrissur district, Kerala – 680684 and Rijoy K.J, aged 27 years, S/o Joseph, Kannampuzha, Ombathungal, P.O Mattathur, Thrissur district, Kerala – 680684, the applicants herein, do hereby verify that the contents of the above paragraphs No. 1 to 15, are true to the best of my knowledge and that we have not suppressed any material fact.



SIGNATURE OF APPLICANTS

Date: 02.10.2021

Place: Kochi