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

MEMORANDUM OF APPEAL

[Under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010]

APPLICATION No.10 OF 2021

BETWEEN

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

Versus

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

ARGUMENT NOTE FILED ON BEHALF OF THE APPLICANTS

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

MEMORANDUM OF APPEAL

[Under Section 18(1) read with Section 14 of the National Green Tribunal Act, 2010]

APPLICATION No.10 OF 2021

BETWEEN

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1. **Locus Standi**

Applicants are residing in their respective addresses, in the nearby village of the 6th Respondent's quarry unit. Applicants comes within the definition of 'person' as per Sec.2(j) of the NGT Act. Applicants are aggrieved by the non-forest activity of mining by the 6th Respondents in the reserve forest land notified as per Annexure A4, without obtaining Forest Clearance from the 1st respondent, and in violation of Section.2 of the Forest Conservation Act. The mining activity in the forest land without obtaining forest clearance is causing damage and degradation to the forest environment and is a serious violation of the FC Act. The applicants are raising a direct violation of a specific statutory environmental obligation by the 6th Respondent, by which, the community at large other than an individual is affected by the environmental consequence and also

the gravity of damage to the forest environment is substantial. Applicants are raising a question arising out of the implementation of Forest (Conservation) Act, 1980, which is an act in schedule 1 of NGT Act. Therefore, the issue raised herein is a substantial question relating to environment, as contemplated in Sec.2(1)(m) of the NGT Act and also a question arising out of the implementation of FC Act.

Every citizen of India is having a constitutional duty to protect and improve Environment and Forests of this country. On that ground alone, the applicants have locus standi to file this application.

Duty of the Tribunal to settle the disputes.

2. As per Section.14(2) of the NGT Act, the Tribunal shall hear the disputes arising from the referred to in sub-section 1 of Sec.14 and settle such disputes and pass order thereon. Section.14(1) mandates jurisdiction over any question arises out of the implementation of the enactments specified in Schedule 1. This is a statutory duty casted upon the Green Tribunal to hear such question and settle such disputes. The question raised herein is whether the 6th Respondent has a statutory duty to obtain forest clearance under FC Act to continue mining operation on the basis of Annexure A1 EC, in land covered by Annexure A4.

Limitation

3. This Application is pointing out a violation of a statutory provision as a continuing cause of action. Only through Annexure A6 dated 23.11.2020, the applicants knew about the violation of FC Act. The 'dispute' in this case arose in between the applicants and the Respondents only after the knowledge about the violation has reached the 1st applicant. This application is filed within the statutory period of limitation from the said

cause of action. There is no case or proof for the 6th Respondent that the applicants were aware about the specific issue of violation of FC Act before Annexure A6. Even otherwise, in cases of continuing cause of action like the blatant violation of FC Act, the applicants are duty bound to approach the Tribunal at any time and raise the dispute.

Whether pendency of any other case before the High Court is a bar for NGT to hear and settle the dispute raised herein?

4. Applicants have raised a specific issue of violation of Sec.2 of FC Act being done by the 6th Respondent and permitted by the Respondents No.1 to 5. Whether this issue / dispute between the same parties was considered by any other forum including the High Court is a matter to be considered for this purpose. Applicants herein have not raised any of the disputes raised herein before any other Forum including the High Court. There was no litigation between the parties herein on any legal issues raised herein before any other forum. Therefore, there is no res-judicata applicable in this case, as the parties are different in Annexure R6(11) WPC No.24806 of 2019 and OA No.10 of 2021. The issues raised by the parties and considered by the High Court in WPC No.24806 of 2019 are also totally different. In para 8 of the Judgment in WPC No.24806 of 2019, the court had framed 6 issues raised by the writ petitioners therein. The dispute raised herein is not an issue considered by the High Court. On that ground also, the issues considered are different in both cases. Whether Sec.2 of FC Act is being violated by the 6th respondent and conducting mining activity in a land covered by Working Plan of Chalakudi division was never an issue framed by the High Court in any of the proceedings therein. If at all similar issue is considered, it is not binding upon the applicants herein as it was not a PIL and not by parties herein.

5. Mere pendency and interim order in any case by the High Court will not and cannot take away the statutory powers being exercised by the NGT. Statutory power of NGT is coupled with duty too. Therefore, the application has to be considered on its merits and this Tribunal has to settle the dispute by passing an order on merits.

6. It is a settled position of law that the Statutory authority can exercise its statutory function even when cases are pending consideration of the courts, unless there is an express bar in any of the judicial orders. NGT is a statutory functionary who is duty bound to protect the environment and implement the FC Act.

Whether maintainability of the application can be questioned by the 6th Respondent at this stage?

7. The Tribunal had passed an order on 12.01.2021 constituting a joint committee consists of officials from the Department of Forest, Revenue, Mining, MoEF&CC and an expert from SEIAA. The order of NGT constituting such a committee with specific mandates was never challenged by the 6th Respondent anytime thereafter. The 6th Respondent did not file any application for modification of the Tribunal's order dated 12.01.2021, and never pleaded anything against such an enquiry done by the Tribunal. An unchallenged order is to be seen as an accepted one. If the 6th Respondent had no complaint about the formation of a joint committee, to enquire into the allegations in the application, then they cannot later find fault with the report of the same committee or any Judgment passed by Tribunal thereafter, on the ground of maintainability.

Report of the Joint Committee – a cause of action for Tribunal to act even suo motu.

8. The Tribunal had initially appointed a joint committee to find out certain factual and legal parameters in this case through order dated 12.01.2021. Issues to be addressed were framed by the Tribunal in its order dated Joint committee. The joint committee, after giving a hearing opportunity to the 6th Respondent found that the land in which mining is being done is a forest land in the government records, especially in the working Plan of the Forest Department, as approved by the 1st Respondent. It was also categorically found that the provisions of FC Act are applicable to the land in question, and 6th Respondent is violating Section.2 of the FC Act. This report alone is a sufficient cause of action for the Tribunal to take appropriate action under law, to ensure the implementation of FC Act, which is in Schedule 1 of NGT Act. When a joint committee consists of various government officials pointing out a blatant violation of a statutory provision, causing damage to the forest, NGT being a statutory regulatory body shall take stringent action to stop it. The joint committee report is much later than any earlier proceedings in the High Court.

Facts which are not in dispute between the parties.

9. The fact that the 6th Respondent is doing mining activity in a land covered by Annexure A4 reserve forest notification, is an undisputed fact. The portion wherein the mining is being conducted is not de-reserved by any notification is an admitted fact. The 6th Respondent has not obtained any Forest clearance from the 1st Respondent for conducting mining activity is also an undisputed fact.

Fact of forest in Re Sy No.1266, 1267 is settled in between DFO and quarry owner.

10. DFO Chalakudy had issued a stop memo to the owner of M/s Edathadan Granites vide CA2-6488/10 dated 09-11-2010 (Ref. No. 3). That was relating the excavation of rocks carried out by the firm in Kodasserry peak NRF Reserve in Survey Nos. 1266/3, 1266/4, 1267/3, 1267/4 in Kodassery village, which are nearby property of the existing mining site the company owner had filed a case in the Hon'ble Hight Court vide WP(C)37773/2010 challenging DFO's stop memo and obtained a stay. In the year 2019, the said case was dismissed due to non-prosecution of the same and interim order of stay has lost its existence. Hence the Stop Memo issued has become final and the fact that Sy Nos.1266/3, 1266/4, 1267/3, 1267/4 of Kodassery village is a reserve forest is settled between parties by the dismissal of the challenge against the earlier Stop Memo. The same party cannot dispute that fact once agitated and finalized. Principle of res-judicata is applicable to the 6th Respondent.

Whether the legal status of the land in question is still forest land?

11. As per the report of the joint committee, the lands are assigned under Arable Forest Land Assignment Rules, 1970. As per the definition 2(b) of the said Rules, the Arable Forestland is defined as 'Forest land transferred to revenue department for assignment under proper orders of the government', and assignment was done before 1980 without de-reservation of the same from the reserve forest status. Once a land is notified as reserve forest by an instrument of law, like Annexure A4, the legal status will remain as forest unless otherwise de-notified by another instrument of law. It is immaterial whether there exists any physical forest or not and whether the land is possessed by revenue department or even private individuals. As per the interim order in WPC No.202/1995,

in TN Godavarman Thirumalpad v. Union of India, **(1997) 2 SCC 267**, the Supreme Court while examining the issue as to what constitutes a "Forest" for the purposes of the 1980 Act observed that the term "Forest" includes all lands understood as forests in the dictionary sense as also any area recorded as forest in the Government records, irrespective of ownership.

12. The Supreme Court in ***Ambica Quarry Works v. State of Gujarat and Others - 1987 KHC 836*** explained the Scheme of the Act as follows:

"6.This was an Act passed by the Parliament to provide for the conservation of forest and for matters connected therewith or ancillary thereto. The Statement of Objects of the said Act is relevant. It is stated that deforestation caused ecological imbalances and led to environmental deterioration. It recognised that deforestation had been taking place on a large scale in the country and it had thereby caused widespread concern. With a view to checking further deforestation, an Ordinance had been promulgated on 25th October, 1980. The Ordinance made the prior approval of the Central Government necessary for de-reservation of reserved forests and for the use of forest land for non-forest purposes. The Ordinance had also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval. The 1980 Act replaced the said Ordinance. The Act extends to the whole of India except the State of Jammu and Kashmir, and came into force on 25th October, 1980. S.2 of the said Act is only relevant for our present purpose. It provides as follows: 2.Restriction on the de-reservation of forests or use of forest land for non-forest purpose:- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing (i)that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation:- For the purposes of this section "non forest purpose" means breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation."

7. The said section makes it obligatory for the State Government to obtain the permission of the Central Government for (1) de-reservation of reserved forest and (2) for use of forest land for non-forest purposes. It is apparent, therefore, that the two dual situations were intended to be prevented by the legislation in question, namely de-reservation of reserved forest, and use of forest land for non-forest purposes.

13. The rigor of Section 2 of the FC Act is applicable to all lands irrespective of its ownership if it is described as 'forest' land in any of the Government records. Whether such recording is prior to 1980 or thereafter, it is immaterial for the purpose of implementation of Section.2 of the FC Act. In this case the State Government even though obtained mining lease on mistake of fact and the project proponent had obtained all other clearances that cannot be a ground for violation of Section.2 of the FC Act. It is an additional restriction / prohibition on the forest lands for conducting any non-forest activities.

14. The Joint Committee has considered the issue in details and reported that by following the Judicial dictum in ***One Earth One Life Vs. MOEF and others*** reported in ***2018 (4) KHC 827*** that the land which is once notified as reserve forest will have its legal status until it is de-reserved by issuing a notification after due process of law. The assignment done prior to 1980 will in no way take away the rigor of Section.2 of FC Act. Considering the inclusion of this land in Working Plan for the management of forest lands in Chalakudi forest division, under the FC Act, there is no doubt regarding the applicability of FC Act. Therefore, FC Act is squarely applicable in this land.

Applicability of Forest Conservation Act in lands used for agriculture prior to 1980 and lost the physical status of the forest

15. The question as to whether the Forest Conservation Act is applicable in lands wherein the agriculture has started operations much prior to 1980 is already decided by the Hon'ble Supreme Court in WP[C].No.202/1995. The Central Empowered Committee appointed by the Hon'ble Supreme Court had an occasion to consider the violation of Fc Act in Munnar area, especially Kannan Devan Hill village (KDH) in Kerala, on a complaint received from One Earth One Life, a voluntary organization. The Central Empowered Committee had directed the Ministry of Environment and Forest to constitute a committee to find out the violations of FC Act in KDH village. The objective and scope of the said committee was to see whether the holder of planation land in KDH village which has started in 19th century much prior to the enactment of 1980 violates the provisions of FC Act. The Union of India had constituted a committee to examine the same and the committee filed a report stating that the land which is mentioned as forest in the Government records will have the status of forest land as far as the implementation of FC Act is concerned. Therefore if at all a private company holding a land which is described as forest in the government records for more than a century and conducting plantation activities in the said land for years prior to 1980, they are duty bound to follow the provisions of Section.2 of the FC Act after the commencement of the FC Act. The committee recommended that the private owner in KDH lands should follow the provisions of FC Act and should manage such lands under the control as per working plants / management plants approved by the Government of India U/s 2 of the FC Act. This report in April 2010 was accepted by the Central Government. This proves that even though the

forest lands are assigned for agriculture and started agricultural activities prior to 1980, the rigor of FC Act will follow unless and until the said land is de-reserved. (Report attached).

The impact of Kerala Forest (Prohibition of felling of trees standing on land temporarily or permanently assigned) Rules 1995

16. The state of Kerala had formulated and enacted the above mentioned rule under the Kerala Forest Act with a specific intend and purpose to protect trees standing on lands temporarily or permanently assigned under the Land Assignment Act or Rules therein. As per Rule 3 of the said rules, all tress standing on lands temporarily or permanently assigned the right of government over which has been expressly reserved in the deed of grand or order of assignment of such land, shall be the absolute property of the Government. As per Rule 4 of said rules, no persons shall fell, lock, cut or maim or otherwise maltreat any tree which is the property of Government without prior sanction in right granted by the DFO having jurisdiction over the area. The above mentioned rules makes it clear that the lands assigned to the predecessor in interest of the 6th respondent and which is enjoyed by the 6th respondent as per the assignment orders produced herein, the 6th respondent is duty bound to protect each and every tree standing in the property or grown after the assignment. Even if the state is permitting him to conduct mining operations in the said land and prior permission under the Forest Conservation Act is obtained, the rigor of Rule 4 will stand against the 6th respondent. In this case no such permission is seemed obtained. Applicants relay upon the provisions of Kerala Forest Rules, 1995 only to show that not only the legal status of the assigned lands to be continued as forest, the physical nature also ought to have been continued as forest

as per the legislative intend behind the FC Act, Kerala Forest Act, Land Assignment Act and the rules made there under. Only because of the illegal mining started by the 6th Respondent, the ecology of the area is damaged.

Trees are still vested with the Government.

17. Even though the assignment of land is made on registry, the full right over the trees on such land were specifically vested with the State Government, at the time of assignment. Such trees either standing at the time of assignment or grown subsequently shall be vested with the government as per the condition in patta. Condition in patta specifically imposes a duty on the Assignee to protect every standing tree in the said land and the trees which are subsequently grown. Therefore the intension behind the patta/assignment is very clear that the physical nature of the forest in no way has to be tampered with the said assignment. The activity permitted is to reside or make cultivation in the said land without altering the physical forest nature of the said land. The ownership of the tress either standing at the time of assignment or subsequently grown are transferred to the forest department and the Forest department is now vested with the ownership and possession of the trees that are grown in the forest lands assigned under the Arable Forest Land Assignment Rules, 1970. The 6th respondent did not produce any document to show that the trees which are marked in the patta produced as R6 11 to R6 16, are permitted to be cut by DFO. Therefore the trees which are marked in the patta are either cut down for the purpose of mining or might have already been destroyed by the 6th respondent for conducting mining activities. In any way conducting mining activity by cutting down the standing trees in the assigned land or destroying any trees subsequently grown will be treated as a violation

of the condition in the patta and is a specific reason for the cancellation of such assignment. Since the trees in the patta land are protected by the Forest department through a specific rule under the Kerala Forest Act, the rigor of Forest Conservation Act along with the Kerala Forest Act will prevail over the rights of the 6th respondent in starting mining operations.

Whether the 6th Respondent is bound to follow any conditions in Assignment?

18. As per Rule 2(c) of the said rules, Assignment is defined as "transfer of land by way of registry and includes a lease and a grant of license for the use of the land". This assignment on registry is a grant of license for the use of land for limited purposes. As per **Rule 4** of the said Rules, the land can be assigned on registry only for the purpose of personal cultivation, house-sites and beneficial enjoyment of adjoining registered holdings. No assignment can be given on registry by any Tahsildar, for any other use of land. Even though Rule 24 prescribes unconditional assignment only by the State Government, here Rule 24 is not applicable as all the patta forms shows that the assignment is under Rule 9(2) of the 1964 Rules, and it was signed by Special Tahsildar and Tahsildar only, not by Revenue Secretary. Hence, the conditions prescribed in patta and Rules are squarely applicable to the opposite party.

19. A possible argument that the conditions in patta is not applicable to persons who purchased the land from assignee is ruled out by Section.8 of the Land Assignment Act. Conditions in patta and Rule are having overriding effect over the provisions of any other Act including Transfer of Property Act. It is a settled question of law in *Gopi Vs District Collector & Ors.*

Effect of Condition No.15 in Patta in this case.

20. The argument of the opposite party that the condition No.15 of the assignment gives reserved rights of sub-soil and rights over minerals to the Government and by using such right Government has given them mining lease, and thus they have not violated any condition of assignment, is factually and legally wrong. Condition No.15 in assignment only means that there is absolutely no right of minerals transferred to the assignee, but vested with the Government. It is for the State government to take Section.2 clearance from the 1st Respondent, if at all they want to start mining operation either themselves or through any other agent. No prudent person in his wildest imagination can interpret that the condition No.15 in patta can override the provisions of FC Act and other conditions in the patta.

Violation of patta conditions leads to cancellation of patta.

21. Rule 8 of Arable Forest Land Assignment Rules, 1970 imposes a restriction on the assignee or his successor in interest that he shall reside in the land if it is assigned as house site or shall personally cultivate the same if it is assigned for cultivation. Rule 16 of the said rules categorically states that the assignment shall be liable to be cancelled or contravention of the provisions of these rules. It is also clear that in the event of cancellation of the assignment, the assignee shall not be entitled to compensations for improvements he might have made on the land. This also makes it clear that the 6th respondent has violated the provisions of the Land Assignment Act and Rules by starting mining operations in the said area.

Policy of the Government was managed with False Certificate

22. When Kerala Minor Mineral Concession Rules, 2015 was notified in February 2015, the State of Kerala has taken a Policy not to process application for Mining leases if the land is assigned for specific purposes. **Rule 27(c)** of the Kerala Minor Mineral Concession Rules, 2015 prescribes a condition that, every application for mining lease should accompany a Certificate from Revenue Department that the land is not assigned for any specific purposes. This clause is to ensure that no mining is permitted in lands assigned for specific purposes. M/s Edathadan Granites have managed to obtain a false certificate from the Village officer Kodassery, Certificate No. 558/15 and Location sketch No. 555/15, stating that this land is not assigned for specific purposes. Only by obtaining such a False Certificate, they have obtained the present mining lease. The same Village Officer has given a letter to Forest Range Officer that the land in question was a forest land and assigned under registry. From that itself, it is clear that the Certificate issued by Village Officer was false. A copy of the false Certificate issued by Village Officer and the letter issued by Village Officer to Forest official is attached herewith. *Mining lease is granted without ascertaining the above facts, as evident from the joint committee report.*

Policy of Government reiterated in 2020 also.

23. The latest Government Communication dated 15.02.2020 from the Revenue Principal Secretary to all District Collectors makes it crystal clear that there is no provision of law prevailing in the state permitting quarry units in assigned lands, even though such a proposal is under the consideration of the Government. Letter No.REV/P2/20/2020-REV dated 15.02.2020 is attached herewith. Any judgment or Government order

related to Land Assignment Rules, 1964 is not applicable to the case in hand.

Conclusions

Considering the above-mentioned points, arguments and documents, the Hon'ble NGT may appreciate the following conclusion.

a) As per Sec.14(2), the NGT has power and duty to settle the dispute raised in this Application on merits.
b) The legal status of the land where quarrying is being done is still forest land. Illegal Mining has destroyed the ecology of that area.
c) Without obtaining Forest Clearance, mining in Forest land is a violation of Section.2 of FC Act, 1980 and has to be stopped.
d) Allow Rs.50,000 as cost of the litigation to the litigants who pointed out the failure of the State mechanism in preventing forest lands.

Based on these facts and grounds stated above, this Hon'ble Tribunal may allow the prayers sought in the application.

Counsel for the Appellant.