

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONAL BENCH AT CHENNAI

IA. NO...1 2 2 of 2020

In

O.A. NO... 1 3 2of 2020

Union Territory of Lakshadweep and others..... Applicant

Vs

Agatti Island Kera Karshaka Sanghom & others..... Respondents

**REPLY FILED UNDER RULE 16 OF THE NATIONAL GREEN TRIBUNAL
(PRACTICE AND PROCEDURE) RULES, 2011**

I, Koya. P., aged 69 years, son of Aboosaia Koya, Agati Island, Lakshadweep-682 553 the applicant herein, do hereby solemnly affirm and sincerely state as under: -

1. That I am the President of the first respondent Sanghom. I am conversant with the facts and circumstances of the case and am competent to swear to this affidavit on its behalf.
2. All facts and averments contained in the present interim application raising preliminary objection on the maintainability are denied.
3. It is most respectfully submitted that as stated in the present petition some persons whose lands are likely to be affected by the new road formation has approached the Hon'ble High Court of Kerala by WP(C)No. 11285 OF 2015, WP(C)No. 35647 of 2016 and other cases. This respondent also tried to get impleaded in the said case and raise their objection to the formation of the road which violates the IIMP. This respondent was given liberty to file a separate writ petition by order dated 15-09-2017. Since there was stay no trees were cut or any steps were taken for the formation of the said road. Thereafter when the 1st petitioner started taken steps to cut trees another WP(C)No. 12567 of 2020 has been filed another group of persons. The said writ petition was also dismissed by the High Court on 14-08-2020. During all these periods there was the stay of the entire project implementation and no trees were cut.


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4. Even according to the petitioners, the 1st petitioner sent the NOV letter to the 2nd petitioner on 31-07-2019 for the construction of beach road with retaining wall. It was specifically stated therein that the 2nd petitioner shall obtain NIOT from them before the commencement of the work. It is most respectfully submitted that the actual work commenced on various occasions and that has been stayed from time to time. The final stay by the High Court was vacated on 14-08-2020 when the WP(C)No. 12567 of 2020 was dismissed. In this regard, it is pointed out that this respondent has filed the Original Application and was registered on 20-07-2020.
5. In this regard, it is specifically stated that about 978 trees were marked for cutting. When the application is filed only 102 were removed. When this Hon'ble Tribunal passed an interim order to maintain status quo on 30-07-2020. Thereafter the petitioners stopped the cutting of trees. Even before the filing of reply statement, they approached the Hon'ble High Court of Kerala by WP(C)No. 21-10-2020 and obtained an order of stay. Using heavy machinery, they cut all the remaining trees and made massive constructions in the beachfront causing severe damage to the ecology and raised a technical objection. It was specifically alleged by them that the interim order is causing them difficulty and filed the writ petition.
6. It is most respectfully submitted that as per rule 16 of the National Green Tribunal (Practices and Procedure) Rules,2011 the parties intending to contest the application has to file a reply within one month from the date of receipt of the notice. In this case, the petitioners have not filed the said reply within the said one month. So, they are estopped from raising a contention on limitation at this juncture.
7. The activities of cutting of trees and formation of a road in gross violation of the Island Protection Zone Notification, 2011 is even now continuing. Therefore, there is no delay in filing the said application.
8. In this regard it is pointed out that the Hon'ble Supreme Court has laid down the question of limitation is not a question affecting the "jurisdiction", being a mixed question of fact and law, it shall be considered only at the time of consideration of the application. [Nusli Neville Wadia vs Ivory Properties. (2020)6 SCC 557.] Therefore, this application need not be considered at this point in time.



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9. It is most respectfully submitted that the application is filed within the prescribed time and there is no delay in applying. It is within the prescribed time and therefore the preliminary objection raised by the petitioners be rejected.

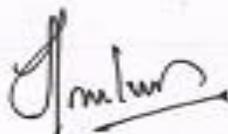
Solemnly affirmed on this the: 2nd day of December 2020



PRESIDENT
Agatti Island
Kera Karshaka Sangham

DEPONENT

And signed his name in my presence.: BEFORE ME



Adv.T.S.HARIKUMAR
(K/782/1989), Ernakulam

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Chennai-600 007.