

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

(Under Section 18(1) read with Sections 16 (h) of National Green Tribunal Act, 2010)

Appeal No.14 of 2022

M. Yuvadeeban

...Appellant

Vs.

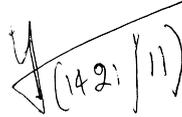
Department of Fisheries & Ors

...Respondents

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Dated at Chennai on 18th October, 2022



THROUGH

Yogeshwaran A

Counsel for the Appellant

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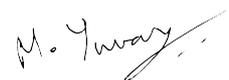
2nd REJOINDER FILED BY THE APPELLANT

I, M. Yuvadeeban s/o Margaret Lawrence, aged about 26 years, residing at B2, Ramaniyam Marvel, Seshadripuram, 1st main road, Velacherry, Chennai 42, do hereby solemnly affirm and sincerely state as follows:

1. I am the Appellant herein and am aware of the facts and circumstances of the case and am competent to affirm to the contents of this affidavit.
2. I submit that I have already filed a rejoinder to the counter affidavits originally filed in the matter. Thereafter, the 1st respondent appears to have filed a pleading titled "Further report of the 1st respondent" dated 22.07.2022 and a pleading titled "Counter affidavit of the 1st respondent" dated 23.09.2022, which in reality is a reply to the rejoinder already filed.

Reply to the counter affidavit dated 23.09.2022

3. At the outset, the entire contents of the counter affidavit under reply are denied as false. They are without merit. The statements made are an afterthought and the affidavit is not based on facts or evidence.
4. I submit that the contents of para 2 are denied. The respondent's pleadings speak for their lack felicity with the subject matter and no elaboration is required.



5. The counter affidavit does not contain para 3 and 4 and the contents of para 5 and 6 are denied as false and it is submitted that Birdlife international also recognises the importance of Yedayanthittu estuary as an important bird area and does not limit it to Kaluveli tank. In fact, the BNHS team that declared this area as an Important Bird Area comprised of the eminent Ornithologist Mr. Asad Rahmani. Even the recent survey commissioned by the forest department in the recent bird Yedayanthittu estuary was conducted by BNHS. There are several lacunae in the EIA report and the baseline floral and faunal survey is inadequate and the EIA report even mentions species that are not found in the area. The attempt of the respondent to state that the Kaluveli tank alone is an important bird area is futile. Reading the references cited by the respondent will show that the Yedayanthittu estuary is an important habitat for birds.
6. In so far as contents para 6 (a) is concerned, the contention that EIA report can only be prepared based on Government reports is without merit. Research in conservation is mainly from organizations and individuals who have an interest in the subject matter. In so far as para 6 (b) is concerned, it is submitted that the project site is not just an inter-tidal area but a salt marsh, biologically active mudflat protected under CRZ 1A. In so far as para 6 (c) is concerned, it is submitted that the respondent appears to be ignorant of the wetland mapping in 2011 by the Space Application Centre, ISRO and the subsequent developments. The map prepared under the NWIA encompasses the entire wetland system including the Yedanyanthittu estuary. The contention that the wetlands of India portal is under progress and therefore the evidence needs to be ignored is without merit. The respondent has accepted that the wetlands mapped under NWIA in 2011 are to be protected under Rule 4 of the Wetland Rules. Construction of a harbour or reclamation of a wetland are prohibited activities. The construction of a "boat jetty" is a permitted activity under the Wetland Rules but the subject project is not a construction of a "boat jetty" but that of a harbour. This argument was raised by the project proponent in the Tribunal to contend that they are only constructing a jetty and the submission was immediately withdrawn by them clarifying that they are indeed

constructing a harbour. In so far as contentions in para 6 (d) are concerned it is submitted that the ICMBIA and the declaration of the Kaluveli bird sanctuary have nothing to do with each other. In so far as the contentions in para 6 (e), (f) are concerned it is submitted that the ill effects of hard structures on coastal ecologies is well documented and recognised by the Hon'ble Tribunal. It is utterly without merit to state that training walls enhance biodiversity and the contentions of the respondent that they improve artisanal and women fisherfolks livelihood demonstrates their lack of understanding of fisher livelihoods. Cetaceans spotting is quite common and in fact photographs of whale spinal cord washed ashore on this coast has also been filed. The EIA report does not even notice these aspects.

7. The contents of para 7 are denied as false. It is submitted that the EIA is woefully inadequate as demonstrated previously and once again the respondent states without merit that opening up of the estuary mouth and dredging would enhance biological diversity. The contents of para 8, 9, 10, 11, 12 are denied false and it is submitted that fishing harbours serve the need of mechanised fishing vessels and not artisanal fishers or women folk who collect oysters, shrimp, crab and lugworms by wading in the estuary. The subject locations chosen for the fishing harbours are extremely bio diverse and ecologically sensitive and important areas. The site selection is without consideration of these factors and based on the government's decision to locate harbours at these sites even prior to impact assessment or the other necessary studies is ought to precede such decision making. The fisheries department can construct harbours at legally, ecologically permissible and environmentally benign locations in accordance with the law but cannot claim a vested right to locate harbours at the present locations.
8. The contents of para 13, 14 and 15 are denied as false. The data regarding rainfall and assertions in the EIA reports of the project proponents is itself proof of the fact that baseline data was collected during monsoon season. This region receives rainfall during both the Southwest monsoon season and the Northeast

monsoon season. The baseline data collected for the EIA report is admittedly between July – October 2020 that falls within the Southwest monsoon period and October - December 2020 falls within the Northeast monsoon period and hence could not be used for the preparation of the EIA report. The report relied on by the respondent does not in any manner state that Tamil Nadu receives no rainfall during Southwest monsoon period. The EIA reports and the other reports mentioned in para 14 are based on inadequate data for the assessments and are vitiated. The respondent has not bothered to explain how these reports are sufficient. The non-application of mind of the SEIAA and SEAC is evident from the minutes of the meetings and the manner in which the clearance has been granted. Imputing vile malafides to the appellant without necessary evidence ought to be deprecated. In fact the tone and the tenor of the counter affidavit and the reply is rather unsavoury and it is attempted abuse masquerading as pleadings.

9. The contents of para 17 is denied as false and the first respondent ought to know that an office memorandum cannot nullify the mandate of Section 25 of the Water Act and Section 21 of the Air Act. The respondent appears to be ignorant of the fact that the CPCB guidelines attempting to do the same has been stayed by the Hon'ble Delhi High Court. These contentions are false and without merit.
10. The contents of para 18, 19, 20, 21 are denied as false and it is submitted that a mere reading of the PFR will show that the shoreline change mentioned pertains to the shoreline and not to the estuary mouth. The mentioned groyne field will only interfere with shoreline dynamics and littoral drift. The impact of such hard structures has been considered by the Tribunal in OA 4 of 2013 which judgement is also misrepresented by the respondent. The so called mitigation measures which talks about deposits of 0.4 MCM of dredged spoils to act as a sand bank is insignificant compared to the interference to the littoral drift mentioned in the EIA report which itself is a euphemised figure. The first respondent, the Fisheries Department, has been instrumental in destroying our

coastline by constructing groyne fields and seawalls and it is not surprising that they still view these measures as ideal solutions. The contents of para 22 is denied as false and it is submitted that the NCCR report is a macro exercise and the specific shoreline assessment for the immediate segment of coastline is required to understand how the shoreline has shifted. In fact, even according to the 1st respondent, the subject coast has also been marked as moderate erosion zone. The extent of erosion along this coast is evident even from satellite imagery and from first respondent's own studies. The respondent has strangely stated that Poompuhar coast is a "severe eroding" coast. The Poompuhar coast was stable until the first respondent built its fishing harbour and devastated that coastline. The applicant calls upon the first respondent to produce EIA reports, shoreline management studies, etc. prepared by them for obtaining clearance for the Poompuhar fishing harbour. Had the first respondent contended during the clearance process that the Poompuhar was a severe eroding coast, no clearance would have been granted. The first respondent ought to be directed to produce the above reports to demonstrate the falsity of their contentions.

11. The counter affidavit under Reply does not contain paragraph number 23. The contents of para 24 are repetitive and have already been responded to. The contents of para 25, 26, 27 are denied as false. It is submitted that it is preposterous to say that increasing the flow of sea water into an estuary is for benefit and without understanding that the wetland system comprises of a brackish and a fresh water ecosystem and any interference to this delicate tidal balance would decimate ecosystems that do not thrive in sea water. The contentions of para 25 are entirely without merit. The contentions raised during public hearing and the manner in which they are being dealt with in the EIA report speaks for itself and requires no elaboration. The contentions in para 27 makes it clear that the first respondent has not obtained any clearance under the CRZ notification and these self-serving assertions do not deserve any consideration. The contents of para 28 are denied as false and it is submitted that the map prepared by NCSCM for the project proponent is not the only

document that is relevant. In fact the CZMP prepared by the NCSCM and previously by the Anna University has been subjected to ground truthing by courts for identification of ecologically sensitive features. The presence of salt marsh vegetation and biologically active mudflats has already been dealt with by the applicant and is not repeated for the sake of brevity. The contents of para 29, 30, 31 are denied as false. The findings in the Annamalai University report have been proven false by the data produced by the Forest Department and it would be appropriate for the first respondent to properly read the data furnished by the Forest Department which provides nesting data for these coasts.

12. The contentions in para 32 are denied as false and it is submitted that the first respondent's EIA reports do not address the issue of increased traffic, light pollution and turtles and the impact of the biodiversity and the ecology of the wetland complex. The contention that fishing vessels venture into the sea in batches of 55 vessels even if for the sake of argument is accepted as true shows the exponential increase in mechanised fishing vessels traffic in the subject area. It is necessary to note that even according to the Fisheries Department there are 10 MFVs in Chengalpattu district and 18 MFVs in Villupuram district. It is submitted that batches of 55 is a figure of imagination of the first respondent, there is no harbour in the coast of Tamil Nadu where fishing vessels venture in organised batches of 55. There is no logic or reason or truth to the statement made by the first respondent. It is uncontroverted that the EIA report makes no mention of the impact of shipping traffic on marine megafauna and marine biodiversity. The contents of para 33, 34, 35 are denied as false and it is submitted that empty false statements like the fishing harbour will have "significant positive impact on avian, terrestrial and aquatic life of the Kaluveli wetland system" ought to be deprecated. The contents of para 34 are repetitive and not germane to the issues at hand and the use of TED has been audited by the auditor appointed by the Hon'ble Madras High Court which shows the status of such implementation of use of TED. The first respondent has failed to understand that TEDs are meant to aid

escape of turtles in case of accidental catch and does not militate against impact of fishing traffic on turtles and other marine fauna. Self-avowed statements for public interest do not entitle the first respondent to a free pass from compliance with environmental laws. The clearance granted is vitiated for more reasons than one and the damage caused to this fragile ecosystem cannot be mitigated or compensated in any manner. The governing principle today is the principle of eco-centrism and is essential that the area be preserved as it is and form any anthropogenic pressures. It is a matter of grave concern that North Tamil Nadu is significantly climate vulnerable and there is an urgent need to protect its beaches and coastal wetlands which are critical climate buffer.

Reply to further report of the first respondent.

13. I have read the contents of the report and deny the same as false, except to the extent expressly admitted hereunder.
14. The contents of para 3, 4, 5 are denied as false and it is submitted that boat parking on the sea shore along small fishing hamlets is not a threat to turtle nesting. In fact turtle nesting happens in these areas without any impediment. The argument that fishing harbour will result in freeing up of beach space for turtle nesting is fallacious and without merit. The first respondent has failed to consider the impact of the hard structures proposed on the coast and the fact that prime nesting sites will admittedly erode away. The argument that 17,164 sq metres area will be cleared of boats is irrelevant because beach landing by fisher boats is not a problem to turtle nesting.
15. The contents of para 6 are denied as false and it is submitted that due to the proposed harbour there will be an exponential increase in the fishing traffic in the subject area and the contentions of the Fisheries Department to the contrary are false.
16. The contents of para 7 and 8 are denied as false and it is submitted that sea water ingress into the estuary will admittedly increase due to the opening up

of the estuary mouth. This will, even according to the argument of the respondent, increase the salinity infusion of the Kaluveli lake.

17. The contents of para 1, 2 and 3 are denied as false and it is submitted that the hard structures proposed will irreversibly alter the coast and groynes are not a solution for the problem.

18. There are very few areas like the Kaluveli wetland complex which supports biodiversity of this magnitude and performs such significant ecological functions. The wealth of this ecosystem lies in protecting it and ensuring its conservation and not its exploitation for construction of harbours. Harbours can be constructed at other locations but the biodiversity of the region cannot be replicated elsewhere. It is of utmost importance to protect and preserve such biodiversity hotspots.

For the reasons stated above it is prayed that this Hon'ble Court be pleased to allow the above appeal and render justice.

M. J. Jayaraj

Solemnly affirmed on this the]
18th day of October, 2022]
and signed his name in my presence]

Before me,

Chithra V
(CHITHRA V)
NAT 6108/17

Advocate, Chennai