

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, AT CHENNAI

I.A No. 116 of 2022 (SZ)

In

ORIGINAL APPLICATION NO. 76 OF 2022 (SZ)

IN THE MATTER OF:

DAMAYANTI SUBRAY MESTA

..... APPLICANT

VERSUS

DEPARTMENT OF PUBLIC WORKS, PORTS &

INLAND WATER TRANSPORT,

GOVERNMENT OF KARNATAKA & OTHERS

..... RESPONDENTS

Additional Affidavit filed by the 2nd Respondent

I, Raghavendra Reddy G, Executive Director of Honnavar Port Private Limited, Hindu aged about 43 years, having office at 103, Lalehzar Apartments, 45/1-2, Palace Road, Bangalore- 5600001, do hereby solemnly affirm and sincerely state that:

G. Raghav Reddy

1. I am the Executive Director of the 2nd Respondent Company and I am duly authorized to file the present affidavit on behalf of the Applicant. I am well aware of the facts and circumstances of the present dispute.

2. The present additional affidavit is filed to bring on record certain additional facts. As a brief background to the pending litigation before this Hon'ble Tribunal, the above Original Application No. 76 of 2022 was filed by Damayanti Subray Mesta on 11/07/2022. The crux of the Application is that the Port Department is undertaking construction of the dedicated 4 lane, 4km, 25 m wide road for connectivity of the Port in "No Development Zone" of CRZ III area (within 200m from HTL) and on CRZ - I - A and I - B area on forest land in violation of CRZ Notification, 2011.

3. At the outset, no construction of the dedicated 4 lane, 4 km, 25 mtr wide road was undertaken by the port department. The road which the Applicant is referring to in the Application is the Kachha Road, which was developed by the Port Department for the purpose of construction of sea wall. The 2nd Respondent has already filed various documents to establish that existence of the Kaccha Road which are detailed herein below, the existence of the road can be established from the following among other site inspections: -
 - a. Shore protection works carried out by the Port & Inland Water Transport Department at Kasarkod village all along the seashore for protection from sea erosion during the year 2010 to 2015.
 - b. Road work and Street light works carried out by the Kasarkod Gram Panchayat during the financial year 2017-18.
 - c. Copy of the details of the sea erosion work bills from the Port Department.

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4. Initially at the time of the Project proposal, as mentioned in the EIA report under chapter 2.6.15.1 - Road connectivity -It was stated that "the site has good road connectivity, NH 17 passes through Honnavar towards East of project site at a distance of about 1 km. The site is connected to Bellary through NH 63 and NH 17. NH 17 meets NH 63 near Ankola at about 45 km from the site. Presently the site can be approached from a single lane black topped road that runs in continuation to NH 17 and then lies parallel to shoreline".

5. The EIA report in Chapter 5 provides for 'Anticipated Environmental Impact and Mitigation Measures', under which, there is a topic in Clause 5.1.2. regarding 'Potential Impact during Construction' and in Clause 5.1.2.1. deal with 'Impact on Local Infrastructure" (Page 189 of Vol -1 of the 2nd Respondent's Type Set of Documents). The said EIA clearly provides mitigation measures which clearly stipulates as follows:-

"To mitigate impact from transportation of stones and construction materials, **existing roads** will be strengthened and widened to enable movement of dumpers. Hence, Impacts would not be significant as quarries are accessible" .

Further under 5.1.2.2. It is clearly stipulated as follows:-

- The dedicated road corridor will be utilised for the transportation of construction material and usage of public roads will be minimised.
 - **Temporary approach roads may be developed with prior permission from competent authority.**
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6. In the Public Hearing conducted on 27/01/2012 (Document reference - In EIA report - Under Chapter 7 - In additional Studies - Public Hearing - Pg. No. 7-1) objections were raised against the use of single lane blacktop road which passes

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through the village. In the Public Hearing repose refers to the Proposed Road as well as Anticipated Potential impact and mitigation measures which are extracted hereunder.

Name of the speaker	Issues Raised	Response of HPPL
<p>Sl. No 6.</p> <p>Shri Nivel Fernandes, Secretary Pershian Boat Honnavar</p>	<p>He pointed out that, project proponent has not given a clear picture of vehicular movement and proposed route for the project area and proposed mitigation methods to avoid nuisance created due to movement of heavy vehicles during development and operational phase -</p>	<p>Proposed road connectivity starts from NH 17 at Kasarkod. This road will then run south east for some distance and then aligns parallel to the shoreline till it reaches the proposed project site. This will be parallel to the existing single lane road at an offset distance of 100 m. The total length of this road from NH 17 to the proposed site is 4.0 km. This road connectivity will have a width of 25 m.</p> <p>Proposed railway line will take off from the existing railway station at Manki. The new railway line will have to be laid for a distance of 14.6 km from Manki railway station to the proposed project site. Proposed railway line will run parallel to existing railway line for a length of about 8 km and then will take a turn towards sea coast which will then run</p>

C. Jayaprakash

		<p>parallel to the sea coast till the proposed project site for the remaining 6.6 km.</p> <p>Anticipated Potential impacts due to the proposed Rail/Road alignment and respective mitigation measures are provided in the EIA report. (Pg. No - 7-16).</p>
<p>Sl. No 8. Shri Badsha Ahmed Patel, Gram Panchayat Member, Honnavar</p>	<p>He also informed that school, masjid, temples and residential area are situated on the way to the proposed project as well as the proposed road and railway track. He also informed that the school, religious places and residential areas will be affected if the project is allowed to come up. He objected to the development of road and railway track as it will affect local ecosystem.</p>	<p>Proposed road connectivity starts from NH 17 at Kasarkod. This road will then run south east for some distance and then aligns parallel to the shoreline till it reaches the proposed project site. This will be parallel to the existing single lane road at an offset distance of 100 m. The total length of this road from NH 17 to the proposed site is 4.0 km. This road connectivity will have a width of 25 m.</p> <p>Proposed railway line will take off from the existing railway station at Manki. The new railway line will have to be laid for a distance of 14.6 km from Manki railway station to the proposed project site. Proposed</p>

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		<p>railway line will run parallel to existing railway line for a length of about 8 km and then will take a turn towards sea coast which will then run parallel to the sea coast till the proposed project site for the remaining 6.6 km.</p> <p>Anticipated Potential impacts due to the proposed Rail/Road alignment and respective mitigation measures are provided in the EIA report. (Pg. No - 7-19).</p>
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7. Thus, the EIA report, provided and took note of the Potential Impact during construction and provided for mitigating measures “ **Temporary approach roads may be developed with prior permission from competent authority**”

8. The said Kachha road falls within the declared notified Port Limits and transportation of construction materials for port development works for a port project can be carried out by using this Kachha Road as the road was well formed during the construction of sea wall (for protection from sea erosion) by the Port Department. As Port is the owner of the road and as per report given by ADLR (Assistant Director Land records) no patta land falls in the existing Kachha road area. It is clear as per CRZ notification that port construction can be carried out as

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the proposed area falls in notified port limits where NDZ is not applicable in such area, falling within notified port limits.

9. The Project Proponent, I.e., the Port Department had formed the kachha road during 2010 -2015 for construction of seawall for protection from sea erosion along the Kasarkod seashore and the said road falls within the limits of Port Department. Further upon submission of EIA report to SEIAA, the State Expert Appraisal Committee (SEAC) of SEIAA had approved as mentioned in the EIA Notification 2006. As the SEAC team members have conducted a site visit on 31/03/2012 and in Point 11 of the observations made about the road it was asked to conduct impact studies for proposed road and railway line on local environment. (5.1.2, 5.7.2.6, 5.8 of the EIA Report includes Impact and mitigation measures)

In compliance to this observation on 10-MAY-2012 HPPL had submitted clarifications as under: -

"11. Impact studies for proposed Road and Railway Line on Local Environment needs to be undertaken (5.1.2 and 5.7.2.6 of the EIA Report includes Impact and mitigation measures) -11.1 Road Connectivity - In order to avoid the congestion to the existing road and to ensure quick traffic movement from/to the port, it is proposed to develop a dedicated road corridor with a Right of Way (RoW) of 25m. The total length of road corridor is about 4 km, which connects proposed barge/vessel loading facility and NH 17 near Kasarkod. The land requirement for the road corridor is 10 ha. Chainage marked in the google imagery is presented in the figure 11-1. The existing land use pattern of proposed road alignment is given in Table 11-1.

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10. Based on the submission made by HPPL on 10th May 2012, as per the proceedings of the 83rd meeting held on 25th & 26th May 2012, the State Level Expert Appraisal Committee had finally recommended the proposal to SEIAA for grant of Environment Clearance for the project which in turn has issued EC vide letter No SEIAA: 22: IND: 2011, dated: 21/09/2012. In the EC issued, Sl. No. 39 of Specific Condition states that all approach roads shall be black topped and internal roads and major haul roads shall be black topped or concreted and swept regularly with mechanical sweepers.

11. The additional documents filed to establish that the kaccha road was in existence is filed hereunder.

Additional documents filed on 11.09.2022.

S. No.	Particulars	Page No.
1.	Google Maps showing existence of Road between 2003 to 2022	1.
2.	Works carried out in Kasarkod Tonka Village of Honnavar Taluk, Uttara Kannada along with Translated Copy	8
3.	Letter to Remove Illegal Encroachment along with Translated Copy	13
4.	Objections to the labelled Photographed filed by the Applicant	17.
5.	First Information Report dated 09/11/2021 along with Translated Copy	26

Additional documents filed on 13.09.2022:

S. No.	Particulars	Page No.
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1.	Existing Road Layout of Kasarkod Village, Honnavar Taluk, prepared by Port Department	1
2.	Working Plan Grant for the year 2017-2018 by the Gram Panchayat Kasargodu Village Pancharath, Taluk, Honnavar Taluk along with Translated Copy	2
3.	Photos of Existing Road	10

Additional documents filed on 24/09/2022:

S. No.	Particulars	Page No.
1	Letter from Honnavar Taluk Fresh Fish Trade Association, Kasarkoda-Tonka Honnavara to Assistant Director of Fishers Grade -1, Kasarkoda- Tonka dated 11.07.2019 along with translated Copy	1
2	Letter from Trawler Boat Owners Association to Assistant Director of Fishers Grade -1, Kasarkoda- Tonka dated 15.07.2019 along with Translated Copy	3
3	Letter from Honnavar Taluka Persian Boat Owners Union to Assistant Director of Fishers Grade -1, Kasarkoda- Tonka dated 16.07.2019 along with Translated Copy	5
4	Letter from Government of Karnataka, Fisheries Department to Port Officer, Honnavar dated 19-07-2019 along with Translated Copy	10
5	Letter to Assistant Commissioner, Bhatkal, Uttara Kannada to Honnavar Port Pvt Ltd. from the residents of Tonka Village along with Translated Copy	16
6	Letter from Office of Assistant Commissioner, Bhatkal, Uttara Kannada District to Honnavar Port Pvt Ltd dated 24.01.2020 along with Translated Copy	29

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7	Letter from National Highways Authority of India to the Director Port & Inland Water Transport, Baithkol, Karward	32
8	Port Limits in Anchorage Map	36
9	Port Limits in CRZ Map	37
1	Corrigendum Letter sent by Honnavar Port Pvt Ltd to member Secretary SEIAA	38

Additional documents filed on 28/03/2023:

S. No.	Date	Particulars	Page No.
1.	3.10.2022	Report Regarding Road Connecting to Honnavar Port Area submitted that Office of Regional Director (Env.) (Forest Ecology and Environment)	1
2.	21.10.2022	Order of Hon'ble NGT in OA 76 of 2022 (SZ) & I.A. No. 116, 144, 146 of 2022 (SZ)	3
3.	4.04.2023	Letter from KSCZMA permitting the 2 nd Respondent to use the Kacha Road	10
4.	28.03.2023	Letter from State Level Environment Impact Assessment Authority regarding Four Laning of Honnavar Port connectivity Road	13
5	28.03.2023	Letter from State Level Environment Impact Assessment Authority for usage of the existing road for development	15
6	24.03.2023	Letter from Principal Secretary recommending to MOFF	17

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12. In addition, the site inspection report dated 03/10/2022 filed by the Regional Director (Env) before this Hon'ble Tribunal to give a clear picture about the road availability by way of a report after spot inspection, it is found that *"Kaccha raod (Road with Gravels Mixture) runs parallel to the beach from NH-17 (Currently NH66) at Kasarakod up to the proposed port area in CRZ-III No Development Zone and as per the information from port department the said Kaccha road was formed during the construction of sea wall (for protection from sea erosion) by the Port Department along the Kasarakod seashore, as the said road falls within the limit of the Port Department".*
13. The Hon'ble NGT vide its order dated 21.10.2022 taking note of the above letter dated 03/10/2022 recorded that the appropriate authority shall take a call on the use of road and pass appropriate order. Liberty was granted to approach the SCMZA for usage of existing kaccha road. Pursuant to the said orders, Port Department has filed application to KSCZMA to use of existing kaccha road - Beach Road.
14. It is humbly submitted that for the CRZ clearance for usage of Kaccha road along the Sea Shore as connection to Kasarkod village for development of Honnavar Port was deliberated by the KSCZMA. In the said meeting the legal representative of the Applicant was allowed to participate. Once again the issue of Existence of Kacha Road was deliberated and after hearing, KSCZMA *"decided to exempt the use of the existing Kacha Road in as in where is basis only, as the proposed area falls in notified port limits were NDZ is not applicable in such area, falling within notified port limits".*
15. Further, SEIAA has stated that prior Environment Clearance for usage of Kachha road does not come under the ambit of scheduled activities listed in the EIA Notification 2006 and its amendment

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16. It is an admitted position that the Kaccha Road falls within the Notified Port Limit. NDZ shall not be applicable within the notified port limited. The KSCZMA has also deliberated and decided to permit use of existing Kaccha Road in as is where is basis. Therefore, there is no impediment in using the existing Kaccha Road which is purely used for port purpose only.
17. The 2nd Respondent would have to use the road in as is where is basis only, without any impact till the above complaint is decided. It is not out of place to mention that public are using the said kaccha raod, which is falling within the Port Limits and restraining the Port department to use the Kaccha Road for Port purposes is unreasonable. The objections of the counsel for the Applicant was also considered by the KSCZMA before granting permission to use the road within the portal limits is permissible.
18. It is not out of place to mention that NCSCM, Chennai has given the maps and their report for consideration of the proposal seeking CRZ clearance for the dedicated 4 lane, 4Km, 25 mtr road. The report of NCSCM clearly delineates the Kaccha Raod which is within the notified port limits and in NDZ limits. Thus, there is no impediments in using the existing kaccha raod for port purposes.
19. Lastly, it is to be submitted that the existing Kachha road is within the port limit and is the only approach road that is available as on date to access the proposed port project site as the Village Road is narrow with ninety - degree angles at certain points which made the maneuvering of the heavy vehicles very difficult.

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20. Therefore, as it is well within the declared and Notified Port Limits, as mentioned in the NCSCM maps/report and Inspection report of the Regional Director (Env), Karwar. The SCZMA has recommended for construction of 4 lane dedicated road corridor to Government of India and the clearance is awaited. It is humbly submitted to allow the use of the existing Kachha road within the port limits as a temporary measure.
21. Applicant has also argued that the beach area of Kasarkod village is the turtle nesting area. This averment is totally baseless and the 2nd Respondent's counter maybe read part of this affidavit. The Applicants are indulging in acts of planting turtle eggs along the proposed dedicated road way and inside the project site as well. The Applicant is attempting to stall the project by wrongly setting up eggs to project as though the area is a turtle nesting ground. The videography which is filed in the pen drive would establish that the Applicant's men are indulged in such unethical and immoral activities. The 2nd Respondent has issued a letter of this incident to the District Collector. The same is also enclosed herein. The same was also submitted to the Karnataka State Coastal Zone Management Authority and displayed the video and the letter to the Authorities.
22. Applicant has also argued that the beach area of Kasarkod village is the turtle nesting area. This averment is totally biased as there is a designated Honnavar Fishery Harbour on the left bank of river Sharavati within 500 mtr from the proposed port project site. This averment is made to stall the development of port and not for any development related to fisheries. Port Director has ensured to undertake adequate mitigation measures to protect turtles nesting within the port limits vide letter addressed to the Member Secretary, Karnataka State Coastal Zone Management Authority. Also, The Principal Chief Conservator of Forests, (Wildlife), & Chief Wildlife Warden, Bangalore has approved the Wildlife Mitigation Plan to be executed by the Ports Department. Declaration of turtle

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nesting zone may attract legal regulations which may adversely affect the local fishing activities, for which the local fishermen had raised their concerns.

23. The local fishermen will be greatly benefitted by this port project as two breakwaters will be constructed by M/s HPPL at the existing gut in order to stabilize the tidal inlet. Dredging will also be undertaken to 10 m depth and free access to fishing vessels would be provided 24x7. This will be undertaken by HPPL at its own cost. This will help the fishermen in safe and smooth navigation of mechanised fishing vessels (MFVs) and ensure more active time for fishing activities as presently they have to wait for the high tide to venture in to the Arabian sea and return back to fishery harbour safely with the fish catch. HPPL/Port department is committed to comply with the conditions recommended by KSCZMA for better environmental safe guards.

24. The 2nd Respondent states that they have already invested more than 200 Crores in this project. The 2nd Respondent has already commenced construction of Jetty, Berth, Procurement of stones for Breakwater and development of internal roads. The 2nd Respondent's machineries and equipment's are lying idle. The equipment's and machineries are getting damaged on account of idling. The photographs of the Plant, Equipment, Machineries which are idle are filed herewith. The entire project has come to a standstill. The local fishermen are not allowing the staff & labors of the 2nd Respondent to enter the site and are indulged in pelting stones at the workers who attempt to enter the road citing that the case is pending in NGT, Chennai. On the other hand, the raw materials (jelly stones/building stones), cement and steel which are kept at the site are being robbed by miscreants. Also, as on date, it is by no way possible to get the maintenance/service done for the machineries/equipment's placed inside the site under the said threatening conditions prevailing in the locality. Further, it is very

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difficult for the 2nd respondent to enter into the port area or to get the support of the local administration until a clear order is passed in the matter by the Hon'ble NGT.

25. HPPL had intended to develop the port at Honnavar by way of making and agreement with the Government of Karnataka under BOT model and in this regards, HPPL has already invested 40% amount of the project cost. Presently, HPPL is entangled in litigation. The litigation thus far are as follows:-

- i) The unauthorized occupants were vacated from 93 acres land bearing sy. no 305 on the basis of orders of Honorable High Court of Karnataka (Dharwad Bench) order WA No: 100303/2016 & 101144-101169/2016 [GM-RES], dated: 20/09/2016 and Deputy Commissioner court order No. RB/LND-2/CR-72/12-13, dated: 29/11/2016 on 6th December 2016.
- ii) On 22.02.2021, Hasi Meenu Vyparastara Sanga filled a Writ Petition before the Honorable High Court of Karnataka, Bengaluru challenging the construction of the port by M/s Honnavar Port (P) Ltd.
- iii) Upon direction from the Hon'ble High Court of Karnataka to verify the issue of turtle nesting ground, NCSCM, Chennai has provided report on the Turtle Nesting which conclude for no nesting of turtles.
- iv) Presently, HPPL is entangled with allegation for the proposed National Highway construction, **which has not at all commenced**. It is developed by Govt of India under Bharathmala Pariyojana Scheme.

26. The 2nd respondent was directed to make application to SCZMA -Karnataka and SEIAA - Karnataka by the Hon'ble NGT, Chennai. On the said directions, applications were made to the authorities and obtained CRZ and SEIAA clearance for the exiting road. Thus proving the existence of the kachha road.

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27. The applicant time and again raises new allegations on the 2nd respondent for the clearances been obtained as per the directions of the Hon'ble NGT and thus causes delay before this Hon'ble Tribunal. These repeated act of the applicant is causing delay in execution of the project and also has lead for the escalation in the project cost. Already the cost of the project is amplified by 30%. The cost spent till date is attached herewith for ready reference.

28. The functioning of Honnavar port will not only boost the State and Nations economy with adaption of liberalization policy in Trade and Commerce but also create job opportunities in the Port project for the rural youths of the region and also bring in lot of industries thus creating a balanced economic & social growth. The GOI has taken Honnavar Port road connectivity under "PM Gati Shakti" projects which will be implemented by the NHAI under Bhartamala Pariyojana Scheme.

In the light of the above, it is humbly prayed that the permission may be granted to use existing Kaccha road for the development of the port project in the light of the clearances granted by KSCZMA and SEIAA to the Port Department as per the directions of Hon'ble NGT.

Solemnly affirmed at Chennai on this
the 23 of April and signed
his name in my presence after reading
the contents herein.

C. Raghu Reddy
BEFORE ME

S. S. Sivaraj
226/2006
Advocate: Chennai
HE COURT
01-10-06