

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ),
CHENNAI

Application No.208 of 2021

Between

Srikanth Madhyastha,
S/o.ShankaranarayanaMadhyastha,
#1-61-(2), Srimatt Road, Balekudru Village,
Hungarcutta, Balkudru,
Udupi, Karnataka – 576 218.

... Applicant

And

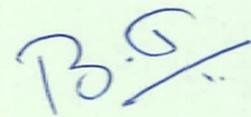
The District Collector,
Udupi District,
Rajathadri,
Manipal, Udupi – 576 104,
Karnataka.
and 13 others.

... Respondents

INDEX

S.No.	Date	Description of Documents	Annexure No.	Page No.
1.	05.03.2022	Rejoinder Affidavit filed by the Applicant	--	1 – 15
2.	27.01.2017	Order in W.P.No.53086 of 2016	A - 5	16 – 26
3.	02.12.2019	Final Order in W.A.No.1570 of 2017	A – 6	27 – 33
4.	28.09.2020	Final Order in W.P.No.53086 of 2016	A – 7	34 – 36

Dated at Chennai on this 5th March, 2022



Counsel for Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ),
CHENNAI

Application No.208 of 2021

Srikanth Madhyastha,
S/o.Shankaranarayana Madhyastha,
#1-61-(2), Srimatt Road, Balekudru Village,
Hungarcutta, Balkudru,
Udupi, Karnataka – 576 218.

... Applicant

Vs.

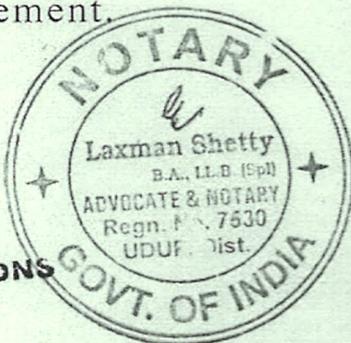
The District Collector,
Udupi District,
Rajathadri, Manipal,
Udupi – 576 104,
Karnataka.
and 13 others.

... Respondents

REJOINDER AFFIDAVIT FILED BY THE APPLICANT

I, Srikanth Madhyastha, S/o.Shankaranarayana Madhyastha, aged 41 years, residing at #1-61-(2), Srimatt Road, Balekudru Village, Hungarcutta, Balkudru, Udupi, Karnataka – 576 218, the Applicant herein, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Applicant in the present Application. I crave leave of this Hon'ble Tribunal treat this Rejoinder Affidavit as part and parcel of the present Application for better appreciation of facts.
2. I have read the Objections/Counter Statement filed by Respondents 11 and 12 in the present Application, I deny the same as completely *erroneous* and misleading in material particulars and that in the circumstances, I am constrained to file this Rejoinder rebutting false and misleading allegations made by Respondents 11 and 12 in the Objections/Counter Statement.



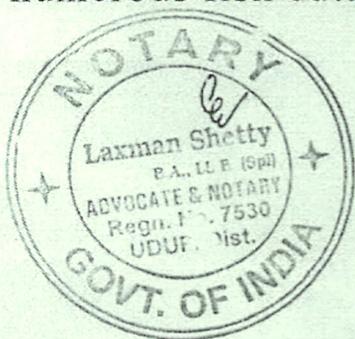
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Srikanth
15/5/22
SIGNED BEFORE ME
15/5/2022
NOTARY UDUPI

3. The allegation in Paragraph No.4 that Respondents 11 and 12 belong to traditional fisherman community in the locality and that they have been in the business of running fish cutting unit and allied activities for generations by usage and customs are denied as baseless and self serving. At the outset, it is submitted that Respondents 11 & 12 are not native residents of Balkudru Village and admittedly, their Fish Processing business in Balkudru Village commenced from the year 2004. In any event the above allegations made by Respondents 11 and 12 would not aid the illegality being perpetuated. The further allegation that Respondents 11 and 12 are following the periodical Rules and Regulations, as and when formulated by all the Authorities concerned is stoutly denied as false and misleading and the same is put to strict proof.

4. I state that allegations made in Paragraph No.5 in the Objections/Counter Statement by Respondents 11 and 12 that Unit No.1 mentioned in the subject application is situated in Sy.Nos.72/3, 72/21B, 71/6, 72/22B, 72/4 of Balkudru Village, Udupi District and that Unit-1 is existing right from 1986 onwards in the above Sy.Nos and a building was then existing and a fish cutting unit has been started with the permission of the Panchayath which has been functioning since then and that the work being performed in Unit-1 is concerned with unloading of raw fish and cutting of fish and transporting to fish freezing industry and is the main activity and there are numerous fish cutting units of such nature in operation in the

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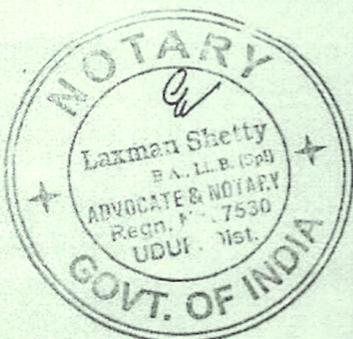
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NOTARY UDUPI

locality mostly established by fishermen community are in existence from time immemorial is all denied as vague, baseless and self serving.

5. The further allegation at Paragraph No.6 that the certificate dated 24.11.2004, issued by the 5th Airody Village Panchayath Udupi T & D would fortify the case of the Respondents 11 and 12 that previously one Smt. Kamala G.Panikar was running a fish processing unit in Sy.Nos.71/6, 72/3 and 72/21B of Balkudru Village in the jurisdiction of the Airody Village Panchayat bearing the building number 1-41 since 1989 and that the old RTC copy for the periods from 1967-68 to 2002-03 along with the English translation filed herewith would also establish the existence of the building in those survey numbers and that the very same running of fish processing unit in the very same building has been continued by the Respondents 11 and 12 herein from 2004 onwards till date by following all the statutory rules and regulations as and then formulated which is the unit 1 of the present subject matter of the application and that apart the said building had electricity connection right from 1982 as per the office order dated 20.10.1982 and 30.12.1982 and that the tax paid to the building establishes the building is pre-existing, subsequently by sale deed dated 19.10.2011 the same was purchased by the 12th Respondent and that her husband who is the proprietor of the 11th Respondent is still continuing the said fish cutting unit i.e. the unit 1 of the subject application by following all the statutory norms, rules and regulations and that it is



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1/27

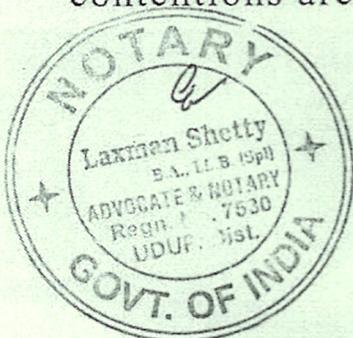
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pertinent to note here that there is effluent treatment plant to discharge the effluents and emissions confirming to the stipulated standards and hence there is no water or air pollution caused from unit 1 and the tax paid receipt by Mr.Keshav Kunder from 31.12.2021 to 31.03.2022 for door no. 1-41 and door no 1-41B i.e. for the unit 1, also would fortify the case of the respondents 11 and 12 are all denied as false and misconceived. It may be seen that none of the documents filed by Respondents 11 and 12 as Annexures B to E alongwith the Objections/Counter Statement reflect the fact that there existed a Fish Processing Unit in the subject lands since 1986. Merely on account of the fact that there existed a tiled roof building or electricity connection in the subject Survey Numbers does not by itself would mean that the Fish Processing Unit was there in existence since 1986 or the previous owner of the subject land was running a fish processing unit. The land classification of the subject lands in the RTC records, Annexure-B filed alongwith the Objections/Counter Statement and other relevant particulars therein are all apparently contrary to the allegations made by Respondents 11 and 12. Assuming without admitting, if the subject lands are already non-agricultural or non-residential once, then there is absolutely no need to convert the same for Industrial Purpose.

6. Further, it may be seen that the Counter Affidavit filed by the 13th Respondent does not confirm or either even refer to Annexure-A or the contents therein. In any event, the said contentions are unavailing as the running of Fish Processing



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14/11

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 NOTARY UDUPI

Unit by itself is a prohibited activity as per CRZ Notification, filed as Annexure -2 by me and no other factor would countenance the said illegal operations.

7. I state that the allegation in Paragraph No.7 that even according to the Applicant, Unit 1 is situated around 338 mts away from Arabian Sea and hence the unit 1 is not within prohibited limit of Coastal regulatory zone as per Costal Regulatory Zone date 15.09.2010 in S.O.2291 (E) issued under section 3(1) & (2) of chapter V of the Environment Act, 1996 is *puerile* and unmeaning. It is reiterated that Unit-I of the 11th Respondent is clearly in violation of CRZ Notifications issued from time to time as the land area wherein the Unit-I is situated is within 500 meters from High Tide Line (HTL) on the landward side along the sea front, besides being within 100 Meters viz., 24 Meters, from River Sita, a CRZ-I Area. Similarly, Unit-II is also within the Costal Regulation Zone.

8. I state that the allegation in Paragraph No.8 that for operating Unit 1, the Karnataka State Pollution Control Board vide Combined consent order no w-314247 PCB ID: 17390 Date: 13/08/2019 has granted consent for fish cutting process and that by corrigendum vide No.PCB/SEO-MNG/SO-UDP/Corrigendum/2021-22/71 dated 12.08.2021, Karnataka State Pollution Control Board has also given consent to treat the overflow of settling tanks of fish cutting from unit 1 in the new ETP at the same time it is pertinent to pointed out that no operation of work regarding fish powdering is going on in Unit II subject as per other conditions stipulated in the order dated



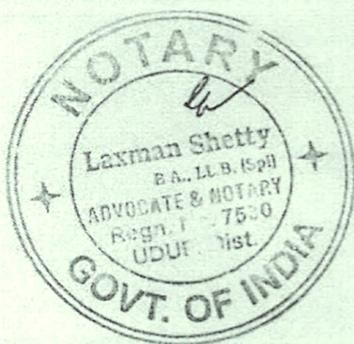
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NOTARY UDUPI

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12.08.2021 and also based on earlier order is unavailing. I have already pointed out in Paragraph No.14 of the present Application that Respondents 11 and 12 have misled, played fraud on the Authorities of Environment Department and other Departments in connivance with the Officials of the Revenue Department and has obtained NOC for grant of permission to convert the immovable property at Sy.No.71/3, to set up an Ice Plant which is 'Green Category Industry' and thereafter, violating the said permission has set-up Fish Processing, Cutting and Powdering Unit, an 'Orange Category Industry' and misleading everyone that conversion was sought for Industrial Propose and that setting up Unit-II is in order. The NOC or the conversion Order given to set-up an industry in CRZ Area is *per se* illegal and contrary to law and ought not have been granted. However, now I understand that during inspection the Officials of the Environment Department has identified all these violations and has taken action against Respondents 11 and 12 under Section 5 of the Environment (Protection) Act, which by itself mean that the NOCs or permissions/license etc., already granted has been revoked or cancelled. In the circumstances, other Respondents including Respondents 11 and 12 cannot take shelter on the said NOC issued by the Environment Department or the permission granted by Pollution Control Board.

9. Now I have further learnt that earlier when the Executive Officer, Taluk Panchayat, Udupi cancelled the building license for Sy No.71/3, the 12th Respondent challenged the same before the Hon'ble Karnataka High Court in W.P.No.53083 of

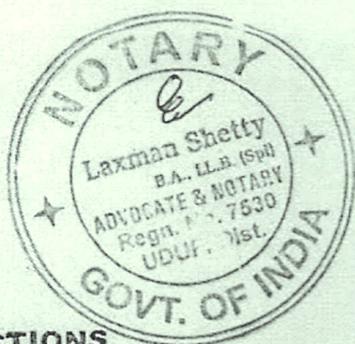


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2016. Originally, in the said Writ Petition, the 11th Respondent has given an undertaking that Unit-I which is situated near the primary school will be shifted to the New Unit viz., Unit-II. Then according to the 12th Respondent, Unit-I has been shifted to Unit-II. However, thereafter, pending the said Writ Petition, the Sub-Divisional Magistrate, on 19.01.2017 conducted a spot inspection to note down the ground situation of the site. During the said inspection, the said Sub-Divisional Magistrate has found that Unit-II remained unfinished and not constructed fully and that there was public agitation including from the School Children who are suffering badly due to the bad odor and foul smell emanating from the said Fish Processing Unit. Eventually, in view of the said reasons, the said Sub-Divisional Magistrate has Ordered closure of Unit-II. Thereafter, the said Writ Petition was disposed off, by Order dated 27.01.2017, directing the 12th Respondent to obtain Clearance and Trade License from the concerned Authorities and thereafter carrying her business at the same place or at a different place outside the town to avoid any nuisance and inconvenience to the public at large. A copy of the said Order is filed herewith as **Annexure A-5**.

10. I further understand that the aforesaid Order was challenged in Appeal in Writ Appeal No.1570 of 2017. On 02.12.2019, the said Writ Appeal was disposed off, directing above the Writ Petition to be restored to file and again consider the matter afresh. A copy of the said Order is filed herewith as **Annexure A-6**. However, curiously, the



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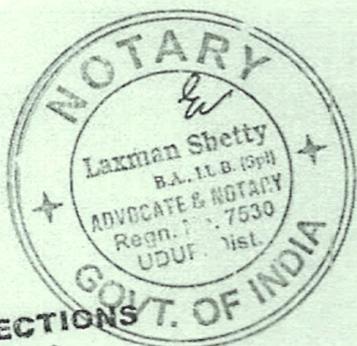
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12th Respondent on 28.09.2020, withdrew the said Writ Petition as *infructuous*. A copy of the said Order is filed herewith as **Annexure A-7**. In view of the facts mentioned above in Paragraph Nos.7, 8, 9 & 10 the entire allegations made in Paragraph Nos.8 & 9 of the Objections/Counter Statement is false and incorrect. Moreover, it is evidently clear that the entire details of litigations mentioned in Paragraph No.9 of the Objections/Counter Statement pertains only to Unit-II in Sy. No.71/3 and the same is nothing to do with Unit-I of the 11th Respondent which is apparently closer to River Sita, viz., 24 Meters, than Unit-II. Similarly, the entire allegations made in Paragraph Nos.10 & 11 are denied as false and incorrect. It may be seen that every time a spot inspection is conducted and Report or an Order is given in the matter by the concerned Officials, the same reflects the actual situation in ground which is completely contrary to the records filed and assertions made by Respondents 11 and 12. Further, the permission/license received from Pollution Control Board Authorities upon which Respondents 11 and 12 place heavily reliance is unavailing in view of the facts mentioned above and the said permissions/license are issued contrary to law, in collusion with the Government Officials, playing deceit, fraud and active misrepresentation. Further, it may be noted that the School in question is in existence prior to 2004, when admittedly, Unit-I of the 11th Respondent was set up.

11. I state that the allegations in Paragraph No.12 that Unit 1 is existing even prior to 1982 is already denied as baseless.



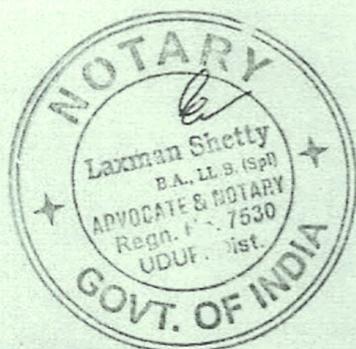
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NOTARY UDUPI

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Further, the assertion that as per the Notification dated 06.01.2011 the activities impugning on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by the local committees and that there shall be no restriction on the traditional fishing and allied activities undertaken by the local community and that the Respondent herein belongs to the fishermen community is in the business of running Fish Cutting Unit with observing to all the parameters of the Environment (Protection) Act, 1986 is false and false to the knowledge of the said Respondents. In this regard it is submitted that as per the above referred Notification, Setting up and expansion of fish processing units including warehousing except hatchery and natural fish drying in permitted area is a prohibited activity. As submitted above, the Respondents are not natives of Balkudru Village who are doing fish cutting and processing traditionally, evidently, they belong to a different Village and they are carrying on Fish Cutting and Processing Industry, an 'Orange Category Industry' admittedly, investing a sum of Rs.3 Crores. Clearly the said business of Respondents 12 and 13 is a large scale commercial activity and the said Fish Processing Unit has been periodically expanded by purchasing neighbouring lands and setting up new Units. In the circumstances, allegations *contra* are unavailing and liable to be rejected *in-limine*.

12. I state that further allegation in Paragraph No.14 that the lands in Survey Nos.71/3 & 71/5, where unit 2 was proposed was purchased vide Sale Deed dated 13.08.2012 and that after



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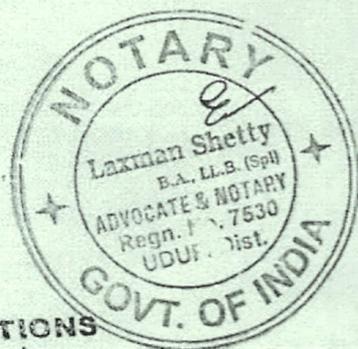
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NOTARY UDUPI

the said purchase conversion of land for industrial purpose has been applied and obtained from the Office of the Tahsildar, on 01.02.2014 is completely erroneous and misleading. I have already pointed out that land conversion Order was obtained for setting up an ice plant which is a 'Green Category Industry', however, after obtaining the said Order, steps have been taken viz., Building constructed and Effluent Plant set up to run a Fish Processing, Cutting and Powdering Unit which is an 'Orange Category Industry' and prohibited activity in a CRZ Area. The aforesaid Order is obtained illegally and contrary to Law and would not aid Respondents 11 & 12.

13. I state that further allegations in Paragraph Nos.15 & 16 that during the course of process to conversion of land the Regional Director dated 22.07.2015 issued no objection to convert the subject land of unit 2 for Industry and specifically stated the land was situated outside the CRZ Zone and that the Directorate of Industries and Commerce issued certificate of registration to run the fish waste powder and that the 13th Respondent Panchayath issued license dated 11.11.2015 bearing number 34/2015-16 permitted to put up the building in converted land in Sy.No.71/3 and that the Applicant has pointed out that the conversion was issued in respect of Sy.No.71/3 was cancelled by the Assistant Commissioner and that the said cancellation order of the Assistant Commissioner was subject matter before the Deputy Commissioner under section 136(2) of K.L.R. Act and the Deputy Commissioner by his order dated 20.12.2019 restored the order of the Tahsildar

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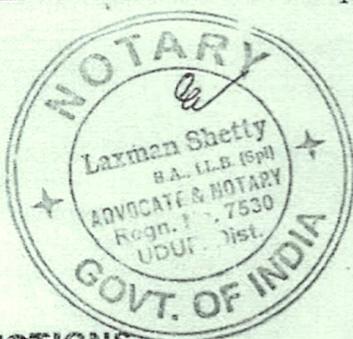
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NOTARY UDUPI

NO. OF CORRECTIONS
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dated 01.02.2014 and that the allegation that the land is not converted is not acceptable is denied as erroneous and misleading. It is reiterated that the said no-objection to convert the subject land to set-up an Ice Plant has been obtained by active misrepresentation and playing fraud giving an erroneous GPS reading pertaining to Survey Number No.146 and the said GPS location does not pertain to Survey No.71/3, Balkudru Village, in the said circumstances, the entire process is vitiated by fraud. Infact, the Applicant has already elaborated at Paragraph No.14 of the present Application, the circumstances, under which the conversion order was obtained. It is specifically pointed out here that Respondents 11 & 12 have not rebutted or denied the contentions raised by me in Paragraph No.14 of the Application. The land in Survey No.71/3 clearly falls within the CRZ area. I have already filed the Land Classification Extract in **Annexure A-3**, alongwith the present Application, showing the Survey numbers comprised in Balkudru Village falling within Costal Regulation Zone-I. Allegations contrary to the above in Paragraph No.18 of the Objections/Counter Statement are denied as false and incorrect. It may be clearly seen that as per the said extract, the entire Survey No.72 is falling with CRZ-I and most part of Survey No.71 also falls within CRZ-I and only those sub-divisions in Survey No.71 which falls beyond 100 Meters of River Sita are exempted from CRZ. I affirm that almost 95% of 71/3 falls within CRZ-I and the entire Survey Nos.71/5 and 71/6 fully falls within CRZ-I. Infact the Report filed by Respondents 2 & 3, have



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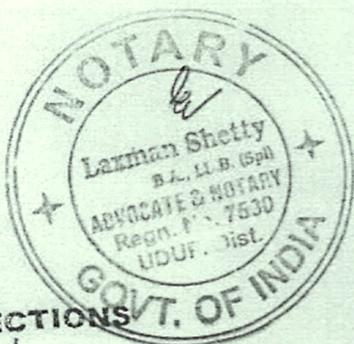
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affirmed that Unit-II in Survey No.71/3 & 71/5 is in violation of CRZ Notification and an Order to demolish the newly constructed fish meal unit in Survey No.71/3 and effluent treatment plant in Survey No.71/5 has already been issued. Further, it is needless, it is to state that the later order for demolition would supersede the prior orders granting no-objection for conversion of land etc., and the same stands automatically revoked/cancelled due to the violations committed. It is also necessary to point out here that the permissions, licenses, no-objections etc., granted to Respondents 11 and 12 are not unconditional, the violating Respondents cannot sustain their untenable claim endlessly pointing on the same.

14. Further, in view of the above fact, the permission/license said to have issued by State Pollution Control Board granting consent for operation, dated 27.07.2018 at Paragraph No.17 is also liable to be revoked/cancelled, if not already done so. The Respondents 11 & 12 having perpetuated all the illegal acts cannot evoke any sympathy pointing out on their investments or their arrangements. Respondents 11 & 12 are to blame nobody except themselves for their plight, having acted contrary to law and committed all fraudulent activities all the way throughout until now.

15. I state that the contention in Paragraph No.19 of the Counter Statement that the present notification issued in 2019 thereby reducing zonal area limit by 100 meters to 50 meters ensure the benefit of the Respondents herein and that if the



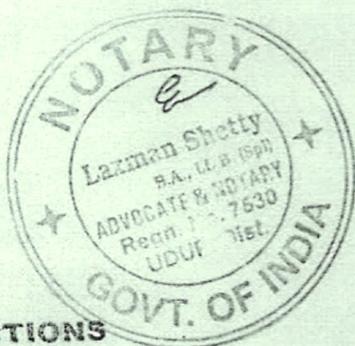
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NOTARY UDUPI

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notification issued on 18.01.2019 made application on its approval, there is no violation from the Respondents is misleading and *erroneous*. It may be seen that as per Annexure-K, filed by the Respondents 11 and 12 it is very clearly stated as follows, "Provided that the CRZ limit of 50 meters or width of the creek whichever is less, shall be subject to revision and final approval of the respective CZMPs as per this notification, framed with due consultative process, public hearing etc., and environmental safeguards enlisted therein, and till such time the CZMP to this notification is approved, the limit of 100 meters or width of the creek whichever is less, shall continue to apply". To the best of my knowledge, belief and information, the coastal zonal area limit has not been reduced from 100 meters to 50 meters and as on date the limit prescribed in the Notification dated 06.01.2011 is prevailing and only in view of the same, the Report filed by Karnataka State Coastal Zone Management Authority is not referring to the Notification, dated 18.01.2019. Allegations *contra*, in Paragraph No.21 and 23 are denied as inapplicable to the case on hand.

16. I state that I am no way connected with the Writ Petition filed in W.P.No.12005 of 2020, by the 14th Respondent and completely unaware of the details mentioned therein at the time of filing the present Application and also the details mentioned in Paragraph No.22. In any event, Respondents 11 & 12 cannot get away by citing the alleged violations of the 14th Respondent. Similarly, the allegations made in Paragraph



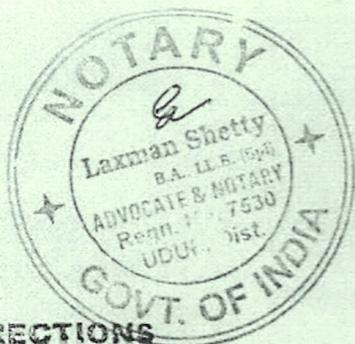
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No.25 are vague and bereft on any materials particulars. In any view of the matter, the said allegations would not aid Respondents 11 & 12.

17. I state that the prayer in Paragraph No.26 that to appoint an expert committee in the Balkudru Village, Udupi District to inspect and evaluate the ground situation since it is a location centric activity and fishermen community in this particular stretch have been performing fish cutting and other allied processing activities from time immemorial and merely because of the subsequent increase in population and residential and other establishments, the activity of fishermen community will not be put in peril and that as this to direct the Hon'ble Tribunal to close down the Unit 1 and Unit 2 of the Respondents will affect the very livelihood of the workers employed in this Respondent's units and also will pave way to file more applications to shut down all other similar fish processing units in the same stretch in turn affecting the livelihood of fishermen community at large and in view of the said reason the present Application is liable to be dismissed is misconceived and a tactical diversion attempted by Respondents 11 and 12. Respondents 11 and 12 to cover-up the illegalities committed by them are bringing up matters which are totally unconnected and irrelevant to the case on hand. Respondents 11 and 12 have acted with impunity violating the Statutory Regulations, Notifications all the while and having carried out all fraudulent activities for their personal gains cannot take resort under any pretext. The said Respondents



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cannot get away endlessly and it is high time to hold them accountable for illegal actions.

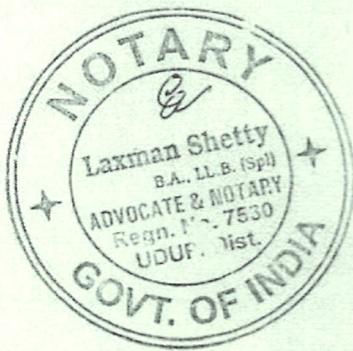
18. I state that Respondents 11 & 12 have made several vague, general and unspecific denials in their Objections/Counter Statement the same are liable to be rejected. Suffice it to state that all the allegations in the Objections/Counter Statement contrary to the above facts are denied as false and incorrect.

I pray that the present Application be Ordered as prayed for.

x *Srikanth*
14/3

Solemnly affirmed at Udupi on]
this 5th day of March, 2022 &]
signed his name in my presence]

Before Me,



Shetty
5/3/2022

Advocate, Udupi

LAXMAN SHETTY B.A., LL.B. (Sp)
Advocate & Notary Roll No. KAR 484/98
Opp. Syndicate Bank
Sub - Registered Office Road
BRAHMAVAR - 576 213, Mob: 9845412305

NOTARIAL REGISTER NO.
SI No. *477*
Date *5-3-2022*
Book No. *1*

NO. OF CORRECTIONS
Nil

SWORN/SOLEMNLY AFFIRMED AND
SIGNED/AFFIXED L.T.I. BEFORE ME.
THIS *5th* DAY OF *MAR* 20*22*
AT *Brahmavar*

SIGNED BEFORE ME
Shetty
5/3/2022
NOTARY UDUPI

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JANUARY, 2017

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.53083/2016(L.B-RES)

BETWEEN

SMT.UMADEVI
W/O B.KESHAVA KUNDAR
AGED ABOUT 46 YEARS
BALAKUDRU
PANDESWARA VILLAGE
POST: SASTHANA
UDUPI TALUK - 576 101.

...PETITIONER

(BY SRI VISHWAJITH SHETTY , ADVOCATE)

AND

1. STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY TO
DEPARTMENT OF PANCHAYATH RAJ
M.S.BUILDING,
BENGALURU - 560 001.
2. THE EXECUTIVE OFFICER
TALUK PANCHAYATH
UDUPI,
UDUPI DISTRICT - 576 101.
3. IRODI GRAMA PANCHAYATH
IRODI VILLAGE AND POST
UDUPI TALUK
REPRESENTED BY ITS
PANCHAYATH DEVELOPMENT OFFICER
PIN - 576 101.
4. DENNIES D'SOUZA
AGED ABOUT 50 YEARS

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

2/11

- S/O PAUL D'SOUZA
AMBEDKAR ROAD
BALAKUDRU
HANGARAKATTE
UDUPI TALUK - 576 101.
5. SRINIVASA ACHAR
S/O RUDRAIAH
AGE 48 YEARS
BALAKUDRU
HANGARAKATTE
UDUPI TALUK - 576 101.
6. RAJESHA
S/O RAMA POOJARY
AGE 58 YEARS
NEAR DURGA PARAMESHWARI TEMPLE
BALAKUDRU
HANGARAKATTE
UDUPI TALUK - 576 101.
7. SATHEESHA
S/O KRISHNA MARAKALA
AGE 45 YEARS
BALAKUDRU
HANGARAKATTE
UDUPI TALUK - 576 101.
8. RADHAKRISHNA NAYAK
S/O PUTTHU NAYAK
AGE 50 YEARS
BALAKUDRU
HANGARAKATTE
UDUPI TALUK - 576 101.
9. GANESHA DEVADIGA
S/O SHEENA DEVADIGA
AGE 46 YEARS
BALAKUDRU

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

3/11

HANGARAKATTE
UDUPI TALUK - 576 101.

...RESPONDENTS

**(BY SRI A.K.VASANTH,AGA FOR R-1
SRI ASHOK.N.NAYAK, ADVCCATE FOR R-2
SRI AJIT ANAND SHETTY, ADVOCATE
FOR R-4, R-6 TO R-9
SRI. A.S.MAHESH, ADVOCATE FOR R-3)**

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS FROM THE R-2 WHICH ULTIMATELY RESULTED IN ISSUING IMPUGNED ORDER ANNEXURE-A DATED 24.09.2016 MADE BY THE R-2; QUASH THE IMPUGNED ORDER ANNEXURE-A DATED 24.09.2016 MADE BY THE R-2.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Mr.Vishwajith Shetty, Adv. for Petitioner.
Mr.A.K.Vasanth, AGA for R1;
Mr.Ashook.N.Nayak, Adv. for R2;
Mr.A.S.Mahesh, Adv. for R3;
Mr.Ajit Anand Shetty, Adv. for R4, R6 to R9;

1. This writ petition was filed by the petitioner with the following prayers:

a) *Call for the records from the 2nd respondent which ultimately resulted in issuing impugned order*

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

4/11

Annexure 'A' dated 24.09.2016 made in Appeal No. Melmanavi/TaPamU/02/2016-17 by the second respondent.

b) Issue writ of Certiorari or any other appropriate writ quashing the impugned order Annexure 'A' dated 24.09.2016 made in Appeal No.02/2016-17 by the second respondent.

c) Issue such other relief/s as it deems fit to grant in favour of the petitioner by this Hon'ble Court in view of the facts and circumstances of the cases, in the interest of justice.

2. The petitioner felt aggrieved by the impugned order, Annexure - 'A' passed by the Executive Officer of the Taluk Panchayath, Udupi, in Appeal No.2/2016-17 (Dennies D'Souza and others Vs. Umadevi and Panchayath Development Officer) which was an order passed on 24.09.2016 setting aside the license No.34/2015-16 dated 11.11.2015 issued in favour of the petitioner, Smt.Umadevi, Wife of Keshava Kundar, for construction of building structure for fish cutting and fish waste powder in 0.31 acres in Sy.No.71/3 of Balkudru Village, Irodi Grama

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

5/11

Panchayath, Udipi Taluk and hence, filed this writ petition before this Court.

3. The learned counsel for the petitioner, Mr.Vishwajith Shetty, submitted that for setting up of the fish cutting and fish powdering Unit, the petitioner, Umadevi had obtained the due clearance from the State Pollution Control Board and the Grama Panchayath and therefore, the Appellate Authority, namely, Executive Officer of Taluk Panchayath had no jurisdiction to set aside that construction permission itself, as was done by him by the impugned order, Annexure - 'A' dated 24.09.2016.

4. While issuing notices in the present writ petition vide order dated 20.10.2016, an undertaking was given by the husband of the present petitioner Mr.B.Keshava Kundar that his unit which was located near the Primary School, would be shifted to the new industrial Unit for fish

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

6/11

cutting and fish powdering, which was being constructed by his wife.

5. Later on, in the order dated **25.01.2017**, it was recorded, as stated before the Court by the learned counsel for the petitioner, Mr.Vishwajith Shetty, that the Sub-Divisional Magistrate of Kundapur Sub-Division has passed an order on **19.01.2017** to close the new unit of the petitioner Umadevi for fish cutting and fish powdering without seeking leave of this Court though the petitioner's husband unit was shifted to the new unit set up by the petitioner/wife, Umadevi.

6. Accordingly, the Sub-Divisional Magistrate of Kundapur Sub-Division was directed to remain present before this Court.

7. Smt.Shilpa Nag, IAS, Assistant Commissioner and Sub-Divisional Magistrate, Kundapur Sub-Division, Udupi is present before this Court, who has explained to the Court

7/11

about the ground situation of the said site in question. She has stated before this Court that she had visited the spot on 19.01.2017 and a serious public agitation including by the school children who are suffering badly because of bad odour and foul smell on account of fish processing unit set up by the petitioner with no objection from the State Pollution Control Board and to avoid any public nuisance, she has passed an order on 19.01.2017 to close the said new unit which, according to her, was not even completely constructed so far and for that purpose, some site photographs are also produced before this Court for perusal.

8. The learned counsel appearing for the villagers and school children, Mr.Ajit Anand Shetty, also submitted that the process of fish powdering in which the fish after being cut, has to be boiled at a particular temperature and then dried before they are crushed into a powder form, causes a very foul smell to which the public at large cannot

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

8/11

withstand. He also pointed out that no proper Trade License so far has been obtained by the petitioner for running of such fish powdering unit.

9. Learned Government Advocate also supported these contentions raised by the learned counsels appearing for the private parties.

10. After hearing all the learned counsels, this Court is of the opinion that unless and until the petitioner or her husband in both the units in question obtain all the "due clearances" and "no objection" from the concerned Government Authorities, they cannot be permitted to carry on the business of fish cutting and fish processing unit at either of the two places to avoid public nuisance and trouble to the school going children in the nearby located school premises. Mere obtaining the clearance from the State Pollution Control Board and the Grama Panchayath

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

9/11

for construction of the building in question is not sufficient to start such a business activity.

11. Therefore, unless and until all due clearances and Trade Licence under the applicable laws are obtained by the petitioner or her husband, they cannot be permitted to undertake the said business activities of Fish Cutting and Fish Powdering Unit. The petitioner will be, of course, at liberty to apply for such permissions to the concerned Authorities, who are expected to consider their applications in accordance with law and pass appropriate orders after giving an opportunity of hearing to her.

12. In view of the nature of public nuisance, which is likely to be caused by this kind of industrial unit set up by the petitioner or her husband in the middle of the town near a school, it would also be proper to the petitioner and her husband to consider the shifting of their industrial units outside the town limits to avoid any public nuisance

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

10/11

for the residents of that area. It is needless to say that larger public interest should always over-ride the private business interest of any individual and the freedom to carry on the business under Article 19(1)(g) of the Constitution of India is always subject to reasonable restrictions under Article 19(2) of the Constitution of India. Therefore, no blanket permission as such can be given to carry on any trade or business of any nature irrespective of the Rules and Regulations governing such business.

13. Accordingly, this writ petition is disposed of with the aforesaid observations and with a liberty and direction to the petitioner, first to seek clearances and Trade Licence from the concerned Departments, and thereafter only, to carry on the business activities at the same place or at a different place outside the town, to avoid any nuisance and inconvenience to the public at large.

26

Date of order : 27.01.2017 in WP No.53083/2016
Smt. Umadevi vs.
State of Karnataka and others

11/11

No order as to costs.

Sd/-
JUDGE

dh

Not An Official Copy

Annex-6

27

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 2ND DAY OF DECEMBER 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT APPEAL NO.1570 OF 2017(LB-RES)

BETWEEN:

SMT. UMADEVI
WIFE OF B.KESHAVA KUNDAR,
AGED ABOUT 46 YEARS,
BALAKUDRU,
PANDESWARA VILLAGE,
POST: SASTHANA,
UDUPI TALUK - 576 101.

... APPELLANT

(BY SRI VISHWAJITH SHETTY.S, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY TO
DEPARTMENT OF PANCHAYATH RAJ,
M.S.BUILDING, BENGALURU - 560 001.
2. THE EXECUTIVE OFFICER,
TALUK PANCHAYATH,
UDUPI, UDUPI DISTRICT - 576 101.
3. IRODI GRAMA PANCHAYATH
IRODI VILLAGE AND POST,

UDUPI TALUK - 576 101,
REPRESENTED BY ITS
PANCHAYATH DEVELOPMENT
OFFICER.

4. DENNIES D'SOUZA
AGED ABOUT 50 YEARS,
SON OF PAUL D'SOUZA,
AMBEDKAR ROAD,
BALAKUDRU, HANGARAKATTE,
UDUPI TALUK - 576 101.
5. SRINIVASA ACHAR
SON OF RUDAIAH,
AGED 48 YEARS,
BALAKUDRU, HANGARAKATE,
UDUPI TALUK - 576 101.
6. RAJESHA
SON OF KAMA POOJARY,
AGED 58 YEARS,
NEAR DJRGA PARAMESHWARI TEMPLE,
BALAKUDRU, HANGARAKATTE,
UDUPI TALUK - 576 101.
7. SATHEESHA
SON OF KRISHNA MARAKALA
AGED 45 YEARS,
BALAKUDRU,
HANGARAKATTE,
UDUPI TALUK - 576 101.
8. RADHAKRISHNA NAYAK
SON OF PUTTHU NAYAK,
AGED 50 YEARS,
BALAKUDRU,
HANGARAKATTE,
UDUPI TALUK - 576 101.

9. GANESHA DEVADIGA
 SON OF SHEENA DEVADIGA
 AGED 46 YEARS,
 MATADA BETTU, BALAKUDRU,
 POST HANGARAKATTE,
 UDUPI TALUK - 576 101.

... RESPONDENTS

(BY SRI KIRAN KUMAR, HIGH COURT GOVERNMENT
 PLEADER FOR RESPONDENT NO.1;
 SRI ASHOK N NAYAK, ADVOCATE FOR RESPONDENT
 NO.2;
 SRI A S MAHESH, ADVOCATE FOR RESPONDENT
 NO.3;
 SRI AJITH A SHETTY, ADVOCATE FOR CAVEAT /
 RESPONDENT NOS. 4 AND 6 TO 9)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF
 THE KARNATAKA HIGH COURT ACT PRAYING TO SET
 ASIDE THE ORDER PASSED IN THE WRIT PETITION
 NO.53083 OF 2016 DATED 27.01.2017.

THIS WRIT APPEAL COMING ON FOR HEARING,
 THIS DAY, RAVI MALIMATH J., DELIVERED THE
 FOLLOWING:

JUDGMENT

Aggrieved by the order dated 27.01.2017 passed in
 Writ Petition No.53083 of 2016, by the learned Single
 Judge directing the writ petitioner to seek clearances and
 trade licence from the concerned departments, and only
 thereafter, to carry on the business activities at the same

place or at a different place outside the town, to avoid any nuisance and inconvenience to the public at large, the writ petitioner is in appeal.

2. Learned counsel for the appellant submits that the writ petitioner filed the writ petition seeking a writ of certiorari to quash the impugned order vide Annexure-A, passed by the second respondent, who in turn had cancelled the licence dated 11.11.2015 issued to the writ petitioner. The learned Single Judge rather than considering the contentions of the writ petitioner, considered the writ petition as if it was a public interest litigation and on hearing the learned counsel for respondent Nos.4 to 9 and has passed the impugned order.

3. The specific case of the petitioner is that even though she had been granted a valid licence on 11.11.2015, the 2nd respondent without any rhyme or reason has set aside the said licence on 24.9.2016.

Hence, he pleads that none of the contentions urged before the learned Single Judge by him with reference to the impugned order has been answered.

4. Learned counsel for respondent Nos.4 to 9 contends that the petitioner, who is the owner of the licence, is responsible for setting aside the licence given to her. Therefore, the contentions of the petitioner have been considered by the learned Single Judge. As noted by the learned Single Judge, substantive public nuisance has been created. Therefore, the trade licence was duly set aside.

5. On hearing learned Counsels, we are of the view that an appropriate relief requires to be granted. Appropriate reasons are not assigned by the second respondent for setting aside the licence dated 11.11.2015 granted in favour of the petitioner. None of the contentions of the petitioner have been considered by

the learned Single Judge in the writ petition. The licence granted to the writ petitioner was a valid licence. It presupposes that all the requirements of law were complied with by the petitioner and only thereafter, the licence was issued. Therefore, to create a situation that it is only on the complaint of respondent Nos.4 to 9, the complaint cannot form the subject matter of adjudication of the said dispute. If at all respondent Nos.4 to 9 can be considered as persons who have initiated proceedings and more so, they are necessary parties, it is for the State to defend the impugned order before the learned Single Judge and it is for the learned Single Judge to consider the validity or other wise of the impugned order. Since the same has not been done, we are of the view that the order of the learned Single Judge becomes unsustainable.

6. For the aforesaid reasons, the writ appeal is allowed. The order dated 27.01.2017 passed by the learned Single Judge in writ petition No.53083 of 2016 is

set aside. The Writ Petition is restored to file. The learned Single Judge is requested to rehear the matter afresh and pass appropriate orders in accordance with law as expeditiously as possible.

Sd/-
JUDGE

Sd/-
JUDGE

Cs/-

Annexure-7

34

1

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER 2020

BEFORE

THE HON' BLE MR. JUSTICE S.G. PANDIT

WRIT PETITION No. 53083/2016 (LB-RES)

BETWEEN:

SMT UMADEVI,
W/O B KESHAVA KUNDAR,
AGED ABOUT 46 YEARS,
BALAKUDRU,
PANDESWARA VILLAGE,
POST.SASTHANA,
UDUPI TALUK-576 101.

...PETITIONER

(BY SRI. HARISH BHANDARY T, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY ITS SECRETARY TO
DEPARTMENT OF PANCHAYATH RAJ,
M.S.BUILDING,
BENGALURU-560 001.
2. THE EXECUTIVE OFFICER,
TALUK PANCHAYATH,
UDUPI ,
UDUPI DISTRICT - 576 101.
3. IRODI GRAMA PANCHAYATH,
IRODI VILLAGE AND POST,
UDUPI TALUK,
REPRESENTED BY ITS
PANCHAYATH DEVELOPMENT OFFICER.

4. DENNIES D SOUZA,
AGED ABOUT 50 YEARS,
S/O PAUL D SOUZA,
AMBEDKAR ROAD,
BALAKUDRU, HANGARAKATTE,
UDUPI TALUK - 576 101.
5. SRINIVASA ACHAR
S/O RUDRAIAH,
AGED ABOUT 48 YEARS,
BALAKUDRU, HANGARAKATTE,
UDUPI TALUK - 576 101.
6. RAJESHA
S/O RAMA POOJARY,
AGED ABOUT 58 YEARS,
NEAR DURGA PARAMESHWARI TEMPLE,
BALAKUDRU, HANGARAKATTE,
UDUPI TALUK - 576 101.
7. SATHEESHA
S/C KRISHNA MARAKALA,
AGED ABOUT 45 YEARS,
BALAKUDRU, HANGARAKATTE,
UDUPI TALUK - 576 101.
8. RADHAKRISHNA NAYAK
S/O PUTTHU NAYAK,
AGED ABOUT 50 YEARS,
BALAKUDRU, HANGARAKATTE,
UDUPI TALUK-576 101.
9. GANESHA DEVADIGA
S/O SHEENA DEVADIGA,
AGED ABOUT 46 YEARS,
MATADA BETTU, BALAKUDRU,
HANGARAKATTE, UDUPI TALUK - 576 101.

...RESPONDENTS

(BY SMT. PRATHIMA HONNAPURA, AGA FOR R1;

SRI. ASHOK N NAYAK, ADVOCATE FOR R2;
SRI. AJITH ANAND SHETTY, ADVOCATE FOR R4 & R6
TO R9)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS FROM THE R-2 WHICH ULTIMATELY RESULTED IN ISSUING IMPUGNED ORDER ANNEX-A DATED 24.09.2016 MADE BY THE R-2 AND QUASH THE IMPUGNED ORDER ANNEX-A DATED 24.09.2016 MADE BY THE R-2.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP **THROUGH VIDEO CONFERENCE** THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Memo dated 13.08.2020 is filed by the learned counsel for the petitioner stating that the writ petition has become infructuous and petitioner seeks to withdraw the writ petition.

- 2. Memo is placed on record. Writ petition is **dismissed** as having become infructuous.

Sd/-
JUDGE

NG*CT:VK