

BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL

(SZ) CHENNAI

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Miscellaneous Application No. 238 /2017

In

Application No.97 of 2016

In the matter of

Mrs. Suma R Nayak

..... Applicant

And

The Ministry of Forest and others

....Respondents

Objections filed by the applicant to the Report filed by the Deputy Conservator of Forests and Deputy Commissioner, D.K.

It is most respectfully submitted as follows:

1. At the outset, The Applicant submits that the report filed by the Deputy Conservator of Forests and Deputy Commissioner, D.K. is false and not maintainable in law and on facts and thus, the applicant prays that this Hon'ble Tribunal may be pleased to reject the report filed by the committee to preserve and protect the ecology and environment including the remaining trees in that vicinity.
2. The applicant further prays that this Hon'ble Tribunal may be pleased to constitute an independent committee to file an independent and impartial report in so far as the earlier committee was headed by the project proponent itself. This applicant also seeks permission of this Hon'ble Tribunal to permit the applicant to be present, when the committee so comes for spot inspection of the site of construction, also alleged places of planting under the so called AIOA scheme.
3. Without prejudice to the above, in respect of the report filed by the Committee, the Applicant submits that the forest land in question to the extent of 5.89 acres have used for non- forest purposes ie. Construction of Deputy Commissioner office (Project Proponent office) in the extent of 2,25,000 Sq.feet having parking space of 234 vehicles at a cost of Rs.41 crores without

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obtaining necessary permissions from the Authorities as laid down under the provisions of Forest Act and EIA Notification. (Paper reports and other documents annexed as Annexure-I)

4. Further, the Applicant submits that to consider the classification of the impugned land, the Deemed Forest Committee was constituted and headed by the Deputy Commissioner (Project Proponent) for the construction of Deputy Commissioner's (Respondent No.4's) office itself. **"No one can be a judge in his own cause"**. Yet, the respondent no.4 on 23.02.2016 presided over the Deemed Forest Committee and passed a favorable order which was in contrary to the judgment of the Hon'ble Supreme in the case of T.N.Godavarman Vs.Union of India. The respondent No.4 ie.Project Proponent being highly influential has manoeuvred the Regional Committee and State Committee to confirm his order of the Deemed Forest Committee without going into the merits and legality of the matter.

4. That the Applicant submits that the land in question housed more than 478 trees was overlooked and emphasis was given on the erroneous survey report stating that out of 5.89 acres certain portion has gone for the road and certain portion of the buildings thereby the land in Survey No. No.23/6a1b2, 23/4b,23/12b,23/6a2b,23/6b and 23/3, Padil, Mangalore, measures less than 2 hectares and therefore does not come within criteria of Deemed Forest. In this regard, the applicant was called for the meeting through a notice via email before two days of the scheduled meeting and in spite of the same the applicant was present at the meeting. The applicant had written a letter dated 22-02-2016 to the respondent No.3 objecting the involvement of the project proponent as chariman in the meeting. The applicant has also filed her written objections to the findings of the District Level Committee (Deemed Forest Committee) and submitted the same to the Respondent No.2 and 3 on 25-02-2016. In spite of the aforesaid objections, The District Level Committee (Deemed Forest Committee) has held that the land measures only 1.96 hectares, has only 386 trees measuring 30 cm gbh and above, 66 naturally grown trees and rest 320 trees are planted. This is totally false and incorrect.

5. The Applicant Submits that the Government order which defines deemed forest **does not talk about measuring a land devoid of the buildings, road etc.** In the present case the respondent No.3 and 4 who are members of the District Level Committee (Deemed Forest Committee) have arbitrarily without legal sanctity have calculated the extent of land after deduction of alleged road, alleged building, the latter including the dilapidated shed. There is no road measuring 0.45 cents nor are the buildings in total measuring 0.60 cents. The plinth area of the buildings present is produced in the main application(**Page Nos.83-84 of Annexure-K in O.A. 97 of 2016**). There is a dilapidated shed surrounded by trees which is not a building. The entire forest land of 5 acres 89 cents is covered with lush green trees in total 478 trees and the 3 staff quarters, 1 office building, 3 dilapidated sheds are surrounded by these trees. The respondent No.3 and 4 have seemingly taken the shed which cannot be considered as a building at all also into consideration so as to get the land below 2 hectare mark.

6. Thereafter, the Respondent No.3 and 4 who are the Secretary and Chairman of the District Level Committee forwarded this recommendation to the Respondent No.2. Subsequently, The Regional Commissioner i.e., Respondent No.2 who is the Chairman of the Revenue Divisional Level Committee conducted the meeting on 29-03-2016 without giving notice to the applicant and confirmed the finding of the District Level Committee (Deemed Forest Committee) and upheld the recommendations made by the respondent No.4 in his capacity as the Chairman of the District Level Committee and held that the land and trees standing in Survey No. No.23/6a1b2, 23/4b, 23/12b, 23/6a2b, 23/6b and 23/3, Padil, Mangalore, measuring 5.89 Acres is not Deemed Forest land. The applicant's application under RTI dated 25-03-2016 was complied only on 20-04-2016 and she got the copies of the documents only on 21-04-2016. The delay in giving the documents to the applicant is intentional so as to prevent the applicant from approaching the NGT in time and to harass the applicant. The proceedings of the Regional Commissioner and letter addressed

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by the Chief Conservator of Forest to the Respondent No.1 is produced with the main application.

6. The applicant submits that the land in Survey No. No.23/6a1b2, 23/4b,23/12b,23/6a2b,23/6b and 23/3, Padil, Mangalore, wherein more than 478 trees are standing, with more than 386 trees of 30cm GBL clearly comes within the definition of Deemed Forest as explained in Annexure O- **"The Following field criteria is approved by the Government for determining the Forest as understood in the dictionary sense (i) All government land parcels (excluding those which are "statutory forests and forest as per Government records) of an area of two hectares and above having at least a density of 50 naturally grown trees per hectar of gbh of 30 cm and above OR .."** and thus mandatory requirements of Section 2 of the Forest Conservation Act ought to have be complied by the Respondent No.4.

Further, It is pertinent to mention that the order of the Deemed committee is in gross violation of the judgment rendered in the case of **T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267**, wherein the Hon'ble Supreme Court held that The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, **must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense,** but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.

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The Hon'ble Supreme Court further discussed the scope of the term "forest" in the matter of **Samatha v. State of Andhra Pradesh & Ors. (1997) 8 SCC 191** wherein it was held that:-

"122.It would thus be seen that 'forest' bears extended meaning of a tract of land covered with trees, shrubs, vegetation and undergrowth inter-mingled with trees with pastures, be it of natural growth or manmade forestation...."

From the bare of the above judgments, it is apparently clear that the impugned site falls under the meaning of term "Forest" and thus, the order of the Deemed committee is in gross violation of rationale rendered by the Hon'ble Supreme Court.

7. The Applicant submits that the respondents have colluded together and without considering the grave impact of the project that would cause tremendous damage on the environment, ecology and wildlife which will consequently have adverse effect on the environment have taken war footing steps to start the project. The Record of Rights has already been mutated in favor of the Respondent No.4 which initially stood in the name of the Karnataka State Industrial Development Corporation (KSIFC). This mutation has taken place in spite of the fact that respondent No.4 has not complied with the promises it has made to KSIFC while seeking permission to develop the above forest land. The respondent No.4 has in exchange to getting the forest land described above has promised 4.50 acres of land in Survey No 38/1A1A situated in Bangrakuluru Grama, Mangalore with 5 important points to be abided by the Respondent No.4 before even taking possession of the above forest land. None of the conditions which are precedent to taking possession of the land by respondent No.3 mentioned in Government Order dated 14-11-2014 (Annexure-Q in O.A.97 of 2016) have been complied by the Respondent No.4.

8. While this is so, the respondent No.4 decided to go ahead with the construction of the new District Government Offices Complex on the forest land described above against the provisions of Section 2 of the Forest

Conservation Act, against the spirit of the Environment Protection laws. The Applicant is also relying upon the report given by expert from St.Alyosius College which speaks about the irreparable damage that will be caused to the environment if respondent No.4 goes ahead with the project **(Page Nos.138-141 of Annexure R in O.A. No.97 of 2016)**. Report of Experts from the department of Botany and Zoology has been produced in the main **application (Page Nos.148-151 of Annexure- T and U in O.A.97 of 2016)**. The cutting of trees has caused huge environmental damage and degradation.

9. The applicant submits that the present issue in question has directly relating to violation of the Environment (Protection) Act, 1986, the Forest (Conservation) Act, 1980 and the Air (Prevention and Control of Pollution) Act, 1981. The respondents are answerable to the fate of 478 trees that stood in the forest land allotted to respondent no.4 and also non-compliance of the provisions of the Forest Conservation Act and its environmental impact and pollution.

10. Further, the Applicant submits that the Original Application No.97/2016 was dismissed on 20-12-2020. The applicant delivered a baby boy on 1.10.2017 in an emergency C section and was advised rest. On 1.11.2017 though matter could not be taken up on merits due to the absence of the expert member the applicant filed the medical certificate before the Tribunal. The matter was then posted to 22.11.2017, and due to the absence of expert member could not be heard so also the applicant could not travel due to the operation and healing period as seen in the medical certificate. Adjournment to Jan 2018 was prayed for , but matter was posted to 20.12.2017. On this day too the applicant could not travel due to medical reasons. Vakalathnama was sent to Advocate G.Stanly Hebzon Singh but the same could not be filed in time.

11. Thereafter, the respondent No.3 and 4 colluded together and without wasting further time called for a sham of a public meeting on 04.1.2018 and even before the next date of hearing of this M.A. 238/2017 ie.22.01.2018,

more than 229 trees were cut within a day. The entire site was like a graveyard of dead trees, destroyed nests. Black day for the District of Dakshina Kannada.

12. At this juncture, it is pertinent to point out that the impugned report in Para.16 states that the project proponent has filed an application before Tree officer to cut down 273 trees which are standing in the site. In this regard, The applicant vehemently objects to granting permission of cutting further 273 trees at the site of construction. **It is totally uncalled for and this Hon'ble Court may be pleased to pass an order of stay against cutting of more trees** in so far as an extensive damage has already been caused and further damage must be prevented.

13. Further, It is **strange and shocking** to note that the "Tree officer raised demand for 273 trees to be cut"! as mentioned in para 16 of the report. Payment should not be the only criteria of consideration before permission is granted but the main focus must be the protection of the environment and the actual necessity, requirement, need to cut the trees.

14. The AIOA Scheme of the Respondent No.1, 3 and 4 is a sham and an eye wash. In this regard, **The applicant submits that 3000 saplings have not been planted by the project proponent as ordered by this Hon'ble Tribunal.** The report is also SILENT as to who has planted the alleged 3000 saplings. **Afforestation means "planting trees on an area of land in order to form a forest"**. The places mentioned in the report ie. Manglore University, Konaje is a university campus filled with educational blocks, so also Navodaya Vidyalaya and no space to do afforestation in the aforesaid places. The other place is a golf course mainly grassland used for golfing. How could the respondents No.1, 3 and 4 plant saplings in private premises run by institutions, trusts and claim to be an afforestation scheme?

14. The applicant further states that the report filed by the committee in para 17 states that “ **no space for replanting in the said area**” which is contrary to the provisions of Environment Protection Act and the intent of the term “ Green Belt”. The Green belt was introduced for mitigating the pollutions in the area where the construction have been put up but in the instant case the project proponent is happy in cutting down the trees but not interested to plant even a single tree in the site where they have done deforestation. In this regard, we humbly pray this Hon’ble Tribunal may be pleased to pass an order of stay to protect the remaining 273 trees which are standing in the site.

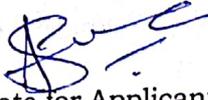
15. The applicant further submits that the built area of the construction is 2,25,000 sq.ft which falls under the category “B” of Item.8(a)“Building and Construction Projects” of the Schedule to the EIA Notification,2006 wherein it is clearly implies that a project proponent ought to have obtain prior Environmental Clearance before commencing the project. In the instant case, there is no clearance obtained by the project proponent. In this regard, the applicant have sent RTI dated 17.09.2020 and hitherto, no reply has been furnished by the authority.**(copy of the RTI application annexed herewith as Annexure-2)**

16. The applicant states that the claims made in the report by the Respondent No.3 and 4 in Para 17, 18 are totally false and an independent committee may be formed to inspect and check the varsity of their claims. The memo filed by this applicant today seeking formation of a inspection committee (to inspect the site of construction and AIOA SCHEME sapling plantation sites) may be read as part of this objection.

In the light of the above submissions and documents, it is prayed that this Hon’ble Tribunal may be pleased to reject the report filed by the Respondent Nos.3 and 4 and an independent expert committee may be formed to file report in order to protect the environment and wildlife in that region .

Dated:8/10/2020

Place: Chennai


Advocate for Applicant/Petitioner

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Applicant

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Respondents

MEMO FILED BY THE APPLICANT

It is most respectfully submitted as follows:

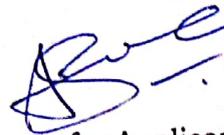
This Hon'ble Tribunal may be pleased to order the formation of an independent expert committee comprising of botanists, environmentalists, social activists, forest official (form another state than Karnataka) to inspect the site of construction where few more trees are standing and also visit the site of alleged planting of saplings under AIOA SCHEME and check:

1. Species of saplings planted
2. Number of saplings planted
3. Age and growth of the saplings
4. Care taken of the said saplings to ensure survival
5. Area whether suitable for the AIOA PROGRAM
6. Whether requisite permissions from the 3 institutions have been obtained for the said planting
7. Whether the species of saplings so planted are in consensus with the ones cut down.
8. From where the saplings were purchased and how many in number and when.

This applicant seeks permission to be permitted to be present in person when the committee comes for inspection. Intimation may please be given to the applicant.

Dated:8/10/2020

Place: Chennai


Advocate for Applicant/Petitioner

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THIS STORY IS FROM MARCH 15, 2020

MORE

Mangaluru: DC office complex may require one more year for completion

Daily Check-ins: 0/5 completed

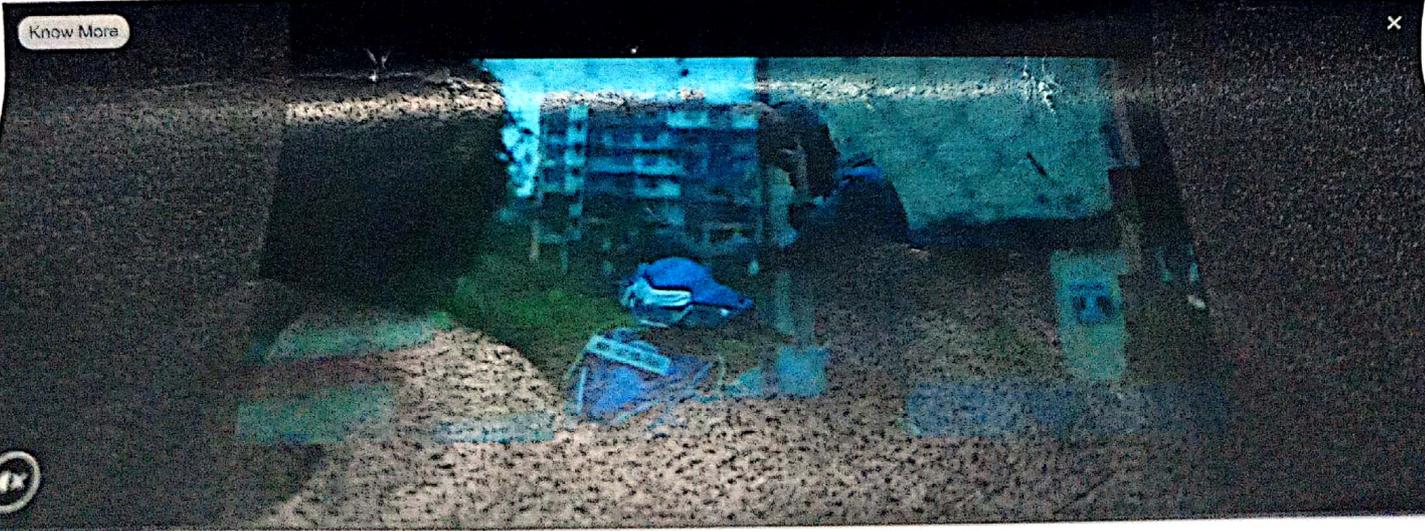
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MANGALURU: The new deputy commissioner's office complex, which is under construction at Padil (<https://timesofindia.indiatimes.com/topic/Padil>), will require one more year for the completion. The 2.26 lakh square feet G+3 storied building is being built in 5.8 acres of land. The building will accommodate 38 departments and offices of MLAs and MP.

The construction was initially planned at an estimated cost of Rs 41 crore, but the actual cost may cross Rs 55 crore, said Umanath Kotian (<https://timesofindia.indiatimes.com/topic/Umanath-Kotian>), MLA, Moodbidri. He said that though the project was started in 2018, the work suffered financial deadlock due to the farm loan waiver and the flood that resulted in huge loss in the state. Later, the construction cost also increased due to the hike in price of materials. The government will release funds and expedite the work, he said.



Recommended by Col

Annexure -

17.09.2020

Mangalore

To

The Public Information Officer

Office of the Deputy Commissioner – Dakshina Kannada

Hamilton Circle

Mangalore

Seeking information under Right to Information Act 2005.

Sub: Information with regard to the new DC office complex being constructed at Padil Mangalore.

Sir,

i would like to seek the following details under the RTI Act of 2005:

- 1.How many floors will the new DC office complex building have?
- 2.What is the total carpet area of the new DC office complex building

I am enclosing postal order No. 50F 386930 of Rupees ten along with this RTI application.

I am ready to bear additional cost if any which may be required to submit all the data asked for in this RTI application.

Yours Sincerely

Dan 17.09.2020
Daniel Tauro

Tauro Nursery

Padil Post

Mangalore 575007

Cell Phone: +91 9986661416