

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
SOUTHERN ZONE BENCH AT CHENNAI  
MEMORANDUM OF APPLICATION  
ORIGINAL APPLICATION No. 242 OF 2020 (SZ)**

(Under Section 18(1) read with Section 14 and 15 of the National Green Tribunal  
Act, 2010)

**IN THE MATTER OF:**

Aliyarukutty  
13/107, Thodiyil Veedu,  
Thevarkunnu Edamon PO,  
Punalur- 691307.  
Contact details:- 9884422695  
taaurs@gmail.com

**... Applicant**

**-Versus-**

**1. Union of India, Rep by its Secretary**

Ministry of Environment and Forests Forest Conservation Division Government  
of India

3<sup>rd</sup> Floor, Prithvi Wing. Indira Parvayaran Bhawan. Jor Bagh, New Delhi-110003  
Contact: 24695132, Email:[secy-moef@nic.in](mailto:secy-moef@nic.in) and others

**... Respondents**

**WRITTEN SUBMISSION FILED BY THE APPLICANT**

1. The above application O.A 242 of 2020 was filed Applicant, before the National Green Tribunal Southern Zone, praying for ,
  - a. *“Injunction Restraining the 7th Respondent Crusher Unit, at S. Nos. 88/22/30/40 and 88/22/30/49 of Edamon Village of Punalur Taluk, Kollam District., from setting up, without No Objection Certificate from the 3rd Respondent,*
  - b. *Direct the Respondent authorities to assess the damages that has been caused, due to the illegal mining, by the 7th Respondent, and use the same to remediate the impugned area, and*
  - c. *Pass such further and other order/s as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

2. Vide order date 11.11.2020 the Hon'ble tribunal was pleased to appoint joint committee, comprising of

- i. The District Collector or the Senior Officer not below the rank of Assistant Collector or Sub-Divisional Magistrate deputed by the District Collector, Kollam,
- ii. Divisional Forest Officer, Kollam
- iii. Senior Officer from the Kerala State Pollution Control Board (KSPCB) to inspect the proposed area where the 7<sup>th</sup> Respondent is intending to establish the unit and submit a factual as well as action report, if there is any violation found.

3. The committee had inspected the site on 22.12.2020 and filed a report to this Hon'ble Tribunal. The important observations of the report are as follows;

- a. The industry M/S. Prime sand Aggregates is proposed to established in 4.26 Acres of lands on the side of the hill.
- b. The site was observed to be hill sloping South-West
- c. Land development works, cutting the hill side and filling the slope to make a platform of about 40m x 40m (approx.50 cents) was seen done. Foundation works for the VSI machine other machineries were seen started. Earth work excavation for water tanks was also going on. It was noted that the foundation work of the VSI was being done in the location as specified in the site is produced herewith as Annexure 7.
- d. An earthen road of about 60m length and 5 m width was seen cut from this site to the public road (Edamon-Pappannur Road) located on the south west side. Out of this length of the road a small portion excavated from the hill side and mostly filled with earth to have the required slope.
- e. The sides of the leveled portion (plat form is excavated to about 3 to 5m height from the hill side on the East and North sides/. The South side is earth filled to about 8 to10m) had not been fully completed but still with earth retaining wall. However the works were not completed but still going on. The new road is on this side of the platform portion. The unit owners reported their intention of providing adequate compaction and earth retaining walls so as to prevent any flow of soil through the slope.
- f. The nearest house locate about 143 m from the foundation laid for the VSI machine uphill towards north.
- g. The distance from the Kallada River is 250m
- h. There is one small shed at the distance 38.9m,
- i. Some fresh dump of earth on sides of the river and road

4. A further report was later filed by the committee, in particular to the mining allegation, dt.

02.03.2021. The important observations of the said report is as follows

The ambiguity noticed in the reports submitted by Mining and Geology department and Thenmala Panchayat Office was discussed.

- a. It was explained by the Geologist that as per the report from Tahsildar, Punalur, there was removal of earth from the site to the adjacent Edamon - Pappannur road side. Since it does not involve transportation of earth from the site in vehicle it is not a violation as per the Department of Mining and Geology.
- b. The Thenmala panchayat Secretary clarified that the unit has MSME Certificate and does not require Panchayat License for 3 years. The Assistant District Industries Officer confirmed this statement. However the unit has applied for clearance for land development works from Panchayat, for which clearance from Town planning Department, Department of Fire & Safety, Department of Factories and Boilers etc. are required. This clearance is not yet issued.
- c. During the discussion it was made clear by both the Geologist & Panchayat Secretary that no violation has been done by the industry according to their prevailing statutes. The minutes of the meeting is produced herewith as Annexure

**5. The substantial issues in the present Original Application are;**

- a. **Whether a consent is valid when a building is in existence in the restricted distance?**
- b. **Whether the industry of the 7th Respondent requires an No Objection Certificate from the Forest department?**
- c. **Whether the act of withdrawal of water from the nearby river is illegal?**
- d. **Whether the extraction, but non-movement of the extracted sand, amounts to mining or not ?**

**A. Whether a consent is valid when a building is in existence in the restricted distance?**

The report of the committee, constituted by the Hon'ble National Green Tribunal shows that there exists a building within the prohibitory distance of 38.9m. Even assuming that the building had come up after the issuance of the consent to establish, it needs to be seen that the Unit had not been setup and the building has come up before the establishment of the industry. If the industry had been established, then the same would have been proved by the completion note that would have been submitted to the Pollution control Board. In any even the building in 38.9m is put up before the establishment of the industry by the proponent and hence the consent needs to be revoked.

**B. Whether the industry of the 7th Respondent requires an No Objection Certificate from the Forest department**

It is submitted that the industry is a polluting one and which is to be established in a near vicinity to the forest. The setting up of such an industry within the buffer zone of the forest shall severely damage the ecology of the area and the same had not been tested by the authorities before issuing the consent. Further the illegal mining in the said site shall severely damage the area. The proponent had failed to obtain the NOC from the forest authority and the unassessment of the impact shall have adverse impact in the forest nearby.

**C. Whether the act of withdrawal of water from the nearby river is illegal**

The 7th Respondent, for the purpose of setting up of the industry and to meet the water source for the purpose of running the industry had illegally setup a pipe line from the Kalada river, which is located at a distance of 250m from the site. The industry had not obtained any permission for extraction of water from the said river and the said act is illegal. The illegal extraction of the water from the river would severely impact the environment. The water from the said Kallada River is used in “Kallada pure water Project” and “Japan Drinking water Project” and the residents of Punalur depend only on this river for drinking water. But this pipeline had been setup without any approval or necessary permissions from any authorities. It is illegal for extraction of water from a natural river, without necessary permission, for the purpose of meeting out the needs of an industry and hence the same has to be restrained,

**D. Whether the extraction, but non-movement of the extracted sand, amounts to mining or not.**

- It is necessary to mention about the topography of the area. The impugned site is at the side of the hill in a sloppy zone, where it is impractical to establish a crusher in the site. Hence the 7th Respondent had excavated large quantity of sand from the area for the purpose of setting up the industry.

- From the report and reply filed by the Third and Fourth Respondents, it is a proven fact that the 7th Respondent had indulged in the act of removing 1) earth to a quantum of 960 MT and 2) rock to a quantum of 80 MT.
- For the purpose of extraction of the above said 960 MT + 80 MT of earth and rock, being a Minor mineral, the 7th Respondent had not obtained any permissions from any authorities.
- The exception for exaction of earth for construction purpose is different from the present one, as the same had not been excavated for the purpose of construction of a building . The difference here is that the exaction to a quantum of 960 MT + 80 MT of earth and rock had been done to alter the topography of the area in order to make it convenient to set up a industry and not for the purpose of building a structure.
- In the WP(C).No. 23251 of 2016, case of VIKRAMAN Vs. DISTRICT COLLECTOR and others, the Hon'ble HIGH COURT OF KERALA AT ERNAKULAM, had come down heavily on the petition of the Petitioner, seeking transit passes for removing the excavated ordinary earth. The claim was raised on the basis of building permits issued by the Local Self Government Institutions (LSGI for brevity), with permission to construct building of less than 300 sq.mrs plinth area.

The Hon'ble Court was pleased to observe the following ;

*“2. This Court had noticed various instances wherein gross misuse of the exemption granted by the State, was perpetrated resulting in razing down hills and leveling hillocks; changing the very terrain of the land, on the strength of building permits issued by the local authorities, thus rendering otiose the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act for short). This Court was faced with numerous instances where large scale mining operations were carried out, on the basis of the exemption under Rule 14(2) and transit passes were sought to be issued, for commercial exploitation of the excavated ordinary earth. Often the building permits, issued by the local authority; which does not create any obligation on the land owner to make that construction having less than 300 sq. meters, was used only for the excavation; with no building being erected. This Court had in one of such cases in W.P.(C).Nos.18137, 18402 and connected cases of 2016 the above batch ie: W.P.(C) 23251 of 2016 passed an interim order dated 19.08.2016 on the following lines:*

*“.....The above writ petition has been filed, seeking a further permit for carrying out excavation of red earth for the purpose of a building construction. The petitioner, on the basis of a building permit, the plan of which is produced at Ext.P3 for construction of a building having a total plinth area of 95.6 sq.meter, has sought for excavation, which has been granted as per Exts.P5 & P6. The photographs produced by the petitioner itself shows that an entire hill has been razed to the ground for the purpose of building a residential house of 95.6 sq.meter.*

*2. This is a gross misuse of the exemption provided under sub-Rule (2) of Rule 14 of the Kerala Minor Mineral Concession Rules, 2015, wherein extraction of ordinary earth for construction of residential buildings, having a plinth area of less than 300 sq. Meters, is exempted. The above provision, according to this Court, is only to grant exemption in so far as removing the earth, which is extracted for the purpose of building the foundation and not to change the terrain of the land itself.*

*3. This Court has come across a number of such petitions, in which claim for O(A) Forms for W.P.(C).Nos.18137, 18402 and connected cases of 2016 transport of ordinary earth is sought for, on the basis of the exemption, which as revealed herein has been grossly misused. It is also to be noticed that the exemption only requires a permit obtained from the Local Self Government Authority and it does not speak of any actual construction being undertaken or finished within a specified time. Hence, any person having land could seek for a permit, carry out extraction and then not carry out the construction at all, in which event, the extraction would have been permitted in contravention of the Rules...”*

- It is necessary to state that, it had been a fashion to excavate the mineral from the lands, in guise of for the purpose of foundation and then transport the same for monetary benefit. The Hon'ble High Court had dismissed the above WP(C).No. 23251 of 2016 as the same was an illegal act. In the instance case thought the need for excavation to a quantum of 960 MT + 80 MT of earth and rock was not necessary, the same had been done by the 7th Respondent in an ill motive. The quantity that had been excavated is huge, which is disproportional to the size of the crusher that is to be established.
- It is highly objectionable that the 3rd and 4th Respondents had termed it not a mining on the only basis that the mineral is not transported. The authorities had failed to notice that the mineral extracted and removed from the floor below is itself amounts to mining, when the same can adversely impact the environment. An excavation undertaken to lay the foundation of a building may not amount to mining, but when the same is done beyond the quantum that is required to be excavated for the purpose of setting up of a crusher, in the present case, it is evident that the proponent had intentions to remove it beyond for the purpose of laying foundation of the building. The mere fact that "the mineral is not sold and hence it is not a mining activity “ is an argument in an angel of monetary aspect and not in an intention to asses if the same would actually impact the environment.
- The excavation exempted for laying building foundation cannot be applied here, as there is no building being setup except a crusher machine. And the quantum extracted, viz 960 MT

+ 80 MT of earth and rock, would clearly show that the intention of the proponent is to move the same and the same is stalled presently due to the same being brought to the notice of this Hon'ble National Green Tribunal. In any event the extraction done had severely impacted the environment and the same is without the necessary permissions from any authorities.

- A mere comparison to the building that is to be setup by the 7th Respondent in the impugned site and the quantum of rock and earth removed, would establish the ill-motive on the excavation activity, that had been carried out.
- The definition of “ *mining*” from Oxford dictionary is, “ *the process of getting coal and other minerals from under the ground;* “. Hence the need for the same to be transported to term it under the purview of mining, as noted by the Respondent authorities 3 and 4 is without application of mind.
- The act of excavation for the purpose of laying concrete foundation for a building is different from this case, as no Local authority permission had also been obtained. The mere excavation taken place shall not come under the purview of laying foundation for setting up an industry as the same had actually been done for altering the topography of the sloppy hill and not for any other purpose.
- Hence the same amounts to illegal mining and therefore it is prayed that this Hon'ble National Green Tribunal may be pleased to direct the authorities to take appropriate action against the 7th Respondent for the said activity.

It is therefore prayed that this Hon'ble National Green Tribunal may be pleased to take the present submissions on file and grant the prayer as prayed in the Original Application and thus render Justice .



Counsel for the Applicant