

BEFORE THE NATIONAL GREEN TRIBUNAL (SOUTHERN ZONE)

CHENNAI

Application NO.34 of 2020

In the matter of

M/s.Sajimon Salim : Applicant

And

Union of India and others : respondents

REPLY AFFIDAVIT FILED BY THE THIRD RESPONDENT



**SANDESH RAJA K**  
Special Government Pleader (Forests)

BEFORE THE NATIONAL GREEN TRIBUNAL (SOUTHERN ZONE)

CHENNAI

Application NO.34 of 2020

In the matter of

M/s.Sajimon Salim : Applicant

And

Union of India and others : respondents

**REPLY AFFIDAVIT FILED BY THE THIRD RESPONDENT**

1. I Sunil Babu A.P, aged 54 years s/o Appukkuttan now working as Deputy Director Periyar Tiger Reserve residing at Thekkady. I do hereby submit that I am the 3rd respondent in the above Original application and that I am conversant with the facts of the said case and I may state as follows:

2. It is submitted that above O.A. is not maintainable in a law or facts of the case. The above Original application is barred by the principles of constructive res-judicata. The prayer in the above Original application is for a direction to the respondent authorities to demolish illegal car parking construction made without prior permission at Anavachal Periyar Wildlife Sanctuary. Original Application No: 89/2014 and 212/2014 are filed against the construction and developmental activities for constructing car parking facility at Anavachal, and other allied construction undertaken in the buffer zone of Periyar Tiger Reserve by the Periyar Tiger Conservation Foundation. True copy of the Original application No.89/2014 filed before the Hon'ble National Green Tribunal, Chennai is submitted and marked as **Annexure R**

**3(1)**

3. The contentions put forth in the application was that the above activity is without clearance from the Forest Conservation Act 1980 and the above project of Car parking facility are activities which are activities prescribed in the approved Tiger Conservation Plan hereinafter referred to as TCP which are not ancillary to conservation development and Management of Forest and Wildlife and therefore will require clearance under Forest Conservation Act.



The Hon'ble National Green Tribunal in paragraph 52 of Annexure A1 judgment has found that the proposed establishment and development of vehicle parking facilities and other amenities for tourists through the statutorily constituted Tiger Conservation Foundation having members from the local communities are ancillary to the conservation, development and management of forests and wildlife, shifting of vehicle parking site and construction of Sewage treatment plant, cafeterias, etc. are to be definitely treated as ancillary to the conservation of forest and wildlife. Therefore, once the statutory authority i.e. the National Tiger Conservation Authority which examines the proposals and approves the TCP consisting of a component on tourism activities which is prepared as per the guidelines issued by the NTCA and upheld by the Hon'ble Apex Court, we find no necessity of obtaining a further clearance under the Forest (Conservation) Act, 1980.

4. The Hon'ble National Green Tribunal in Annexure A1 judgment has further found as follows:

"Therefore, taken a holistic approach and looking at the larger objective of conservation of forests and wildlife by involving the local communities, undertaking of the ecotourism activities approved by the NTCA which is a statutory authority, at the fringe of the buffer zone of the Reserve without felling a single tree, establishment and maintenance of minimum amenities for visitors such as vehicle parking facility, ticket counter, cafeteria, wash rooms, interpretation centre, etc. should not be considered as diversion of forest land for non-forest purpose so as to attract the provisions of Forest (Conservation) Act, 1980. Moreover the proposed facility is located in the town limits, amidst densely populated locality not frequented by wild animals. The activities can be grouped under the works relating or ancillary to conservation, development and management of forests and wildlife. Hence we told that there is no necessity to obtain a separate approval under Forest (Conservation) Act, 1980. Even when check posts, wireless communication centres, watch towers, etc. are established deep inside the forests, even in Core or Critical Tiger Habitat, Certain minimum facilities for stay of the forest personnel are required. If so providing such facilities including construction of shelters for patrolling staff to protect themselves from the attacks of wild animals, kitchen for cooking food, wash rooms for attending nature's call, etc. which are not specifically mentioned in section 2 of the Forest (Conservation) Act, 1980, it could be argued that they amount to diversion of forest land and hence attract the



Forest (Conservation) Act, 1980. Such argument is highly inappropriate and cannot be sustained. The overall objectives have to be looked into. Minimum facilitated for the visitors in the fringe area of the buffer zone of the reserve, that too located in the well-developed town limits, definitely it cannot be termed as diversion of forest land for non-forest purpose. We cannot accept such contentions. It is not that the park authorities are free to do whatever they want. Whatever activities are undertaken, they should be strictly in conformity with the approved TCP, prepared based on the guidelines issued by the NTCA, examined and cleared by the Apex Court of the land. The tourism activities in the fringes of buffer zone are incidental to the management of the reserve and involve the local communities and such involvement is a part of conservation efforts. Involving the local communities in conservation activities and natural resource management is to strengthen the protection measure and it is a recognised practice particularly in developing countries which are rich in biodiversity.

5. It is submitted that the Hon'ble National Green Tribunal in Annexure I judgment has also found that there should not be any objection to carry out such tourism activities which form part of the TCP approved by the NTCA. The Hon'ble Tribunal also found that tourism activities listed in Chapter 23 of Tiger Conservation Plan have been approved by the competent authority and therefore we hold such activities do not amount to diversion of forest land and utilization of forest land for non-forest purpose attracting the provisions of the Forest (Conservation) Act, 1980. It is also found that it is not necessary to again approach MOEF with proposal of clearance under the Forest (Conservation) Act, 1980 as the ecotourism activities involving the local communities are ancillary to the conservation, development and management of forests and wildlife.

6. It is submitted that the appeal has been filed against the above judgment in the Hon'ble Supreme Court as C.A.No.19581-82 of 2017 by the State of Tamil Nadu and the Hon'ble Supreme Court after hearing of the parties has passed an interim order dated 04.12.2017 granting permission to the state of Kerala to erect temporary structures in connection with the ticket counter cafeteria, etc. True copy of the interim order dated 04.12.2017 in C.A.No.19581-82 of 2017 is attached herewith as **Annexure R3(2)**. All the constructions are temporary constructions done in accordance with the interim order of the Hon'ble Supreme Court. Hence it is humbly submitted that the



- 4 -

present O.A. is to be dismissed at the threshold on the ground of constructive res-judicata, as the question already decided by the Hon'ble National Green Tribunal by Annexure A1 judgment cannot be again re-appreciated by the Tribunal even if it is filed by the other applicants.

7. It is submitted that temporary construction for facilitating parking which has been done in accordance with the interim order of the Hon'ble Supreme Court cannot be subject matter of the above O.A. and therefore the above O.A. is to be dismissed with costs to this respondent.

8. It is submitted that the averment in paragraph 6 of the Original Application that the construction is made in such a fashion that it obstructs the rain water is an incorrect averment and hence denied. It is submitted that this respondent has only put interlocking paver block. The laying of paver block is highly necessary for the parking of the vehicle and for pedestrian walk way. It is submitted that there is a small drain provided in the boundary of the parking area and the water is flowing through the above drainage.

9. It is submitted that consent of the 6<sup>th</sup> respondent is not at all necessary for putting up interlocking paver block and the same does not cause any pollution and the averment that the construction had caused an irreparable damage to the environment is an incorrect averment and hence denied. There is no construction as stated by the petitioner in the above area and there is no irreparable damage caused to the environment. The petitioner has stated about the consent from the State Pollution Control Board for the STP and the same has not been constructed.

10. The averment in paragraph 7 that the applicant obtained information on the same through the Right to Information Act on 28.10.2019 which states that the said construction had been carried out by the department of tourism without the mandatory permission as envisaged under the Environment Protection Act is incorrect and hence denied.

11. Regarding the averments in the grounds it is submitted that the temporary construction in compliance with the interim order of the Hon'ble Supreme Court with regard to the laying of interlocking paver block does not require any consent under Section 25 of the Water (Prevention and Control of Pollution) Act 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981. The rights of the applicant under Article 21 of the



constitution of India has not been infringed by any of the actions of this respondent.

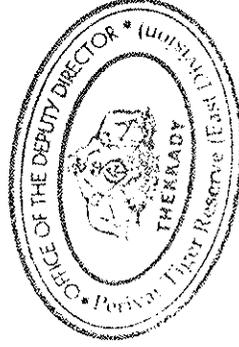
12. The Forest Department is having the fundamental duty under Article 51 (A) of the constitution of India to protect and improve nature and environment including wild life and for that reason the parking area which was earlier located inside 2km the buffer zone near to the boat landing Yard which is having a devastating impact on the environment and the wildlife was relocated to the Anavachal meadow after putting interlocking paver block and the actions of the respondent is a for protecting and improving the nature including forest, lakes and wildlife and this respondent is performing the duty in protecting the environment in compliance with the orders of the Tribunal and the Hon'ble Supreme Court.

13. It is submitted that applicant is a tour operator of the Kumaly area and is a person having no interest in the conservation of wildlife, but only interested in canvassing the tourists and earn for his own personal benefits. The applicant is personally aggrieved by the shifting of car parking from the boat landing yard to the present area like other tourists operators Thankappan and Abraham Thomas who are applicants in the earlier application and therefore the above application is to be presumed to filed with malafide intentions and without bonafides. The petitioner has not even stated anything about this credentials. The above Original Application is filed with ulterior motive and to stall the parking of the vehicles in the Anavachal meadow for his vested interest and therefore this Hon'ble Tribunal may be pleased to dismiss the Original Application with compensatory cost to this respondent.

Dated this the 20<sup>th</sup> day of November 2020.

  
**DEPONENT**

Solemnly affirmed and signed before me by the deponent whom I know on this the 20<sup>th</sup> day of November, 2020 at the Office of the Deputy Director Periyar Tiger Reserve, Kumali



  
**ASST. FIELD DIRECTOR  
(PROJECT TIGER)  
PERIYAR TIGER RESERVE  
EAST DIVISION, THEKKADY**

BEFORE THE NATIONAL GREEN TRIBUNAL ADDL  
BENCH, AT CHENNAI

[Under Section 18 (1) read, with Sections 14, 15, 16  
and 17 of the National Green Tribunal Act, 2010]

APPLICATION NO:89 of 2014 (SZ)

BETWEEN

M.S.Thankappan,  
Manthanam House,  
Thamarakandom Road,  
Thekkady P.O., Idukki District        :: Petitioner

VERSUS

1. Union of India,  
Ministry of Environment and Forests,  
Parayavarani Bhavan,  
Forest Conservation Division,  
Government of India,  
Parayawaran Bhawan, CGO Complex,  
Lodi Road, New Delhi - 110 003.
2. The Conservator of Forests,  
Kerala State, Forest Headquarters,  
Vazhuthacaud,  
Thiruvananthapuram-695014.
3. The Deputy Director (Project Tiger),  
Office of the Deputy Director,  
Periyar East Division,  
Periyar Tiger Reserve,  
Thekkady, Idukki District.
4. National Tiger Conservation Authority,  
Government of India,  
Ministry of Environment and Forests,  
Annexe-V, Bikaner House,  
Shahjahan Road, New Delhi-110 011,  
Represented by its Director.
5. State of Kerala,  
Department of Tourism,  
Represented by its Secretary,  
Room No. 157, Near North Committee Room,  
North Block, Secretariat,  
Thiruvananthapuram-695 014        :: Respondents



1. The Address for service of notice of the Applicant is M/s. T.MOHAN and YOGESHWARAN, having offices at No. 368, New Additional Law Chambers, High Court buildings, Chennai-600 104.

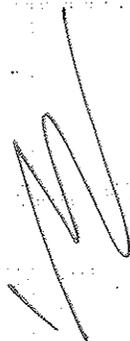
2. The address of the Respondents is given above for the purpose of notices of the present Application are same as given above.

3. That the Applicant above named begs to present this Memorandum of Application seeking relief for the protection of the environment against the mining activities.

#### 4. **FACTS IN BRIEF**

That the in brief lading to this application is given below:-

4.1 That without obtaining Forest Clearance from the Centrally Empowered Committee, the officers of the Forests and Wildlife Department is developing a car park of 20 acres inside the wildlife habitat at Anavachal inside the Periyar Wildlife Sanctuary at Thekkady causing severe threat to the forest ecology and the wildlife in it.



4.2 The petitioner is a resident of the area and has a concern for the protection of the environment and ecology of the area.

4.3 The Periyar Wildlife Sanctuary covers an extent of 925 Sq kms, of which 360 k<sup>2</sup> (140 sq mi) is thick evergreen forest located in Idukki District in Kerala State. The Wild Life Sanctuary was declared a Tiger Reserve in 1978 and is one of the 27 tiger reserves in India. There is an artificial lake in formed by the water collected from Periyar River. The wildlife includes Elephants, Bisons, Deers and a good collection of Tigers. The Periyar Tiger Reserve is an example of nature's bounty, with great scenic charm, rich bio diversity and providing veritable visitor satisfaction. Sprawled over an area of 925 Sq.km., Periyar is one of the 27 tiger reserves in India.

4.4 The second Respondent who is also the Chief Wildlife Warden has obtained approval for Tiger Conservation Plan from the 4th Respondent as per order No.F.No.1-14/2011-NTCA, dated 21st March, 2013. It is claimed that the project is for the conservation of Tigers in the reserve and to reduce the lot of biotic pressure and other matters in the said Periyar Wildlife Sanctuary. The 4th Respondent while granting sanction that the project shall not overrule the existing laws of the



country, especially Indian Forest Act, the Forest Conservation Act, 1980, the Environment Protection, etc.

4.5 Under the guise of the above sanction, the Department of Tourism has decided to develop the area and make certain constructions. It is decided to provide a car parking facility at Anavachal, construct boat jetty, recreation centers, dining rooms, office rooms, shopping complex, etc. The 5th Respondent as per order, G.O.(Rt).No. 5138/2013/TSM dated 25-06-2013 at a cost of 499.97 lakhs of rupees.

4.6 It is respectfully submitted that what was intended by the Respondents 4 and 5 is development of Tourism and not protection of Tiger, for which the project is launched. Under the guise of the Tiger protection substantial forest land will be converted into parking space, shopping mall, and other buildings and that too without obtaining permission from the Centrally Empowered Committee as contemplated under the Forest Act. This Applicant has asked the 4th Respondent has to whether any sanction has been obtained and about the extent of the location of the area where constructions are proposed and the activities. The 4th Respondent has admitted, by letter



F.No.10-1/2013-NTC, dated 4<sup>th</sup> September, 2013 that no sanction from the Hon'ble Supreme Court has been obtained and the details of the same are not available with him.

4.7 Though the 4<sup>th</sup> Respondent categorically admit that no sanction has been obtained from the Supreme Court of India as per letter dated 4<sup>th</sup> September, 2013, but the 3<sup>rd</sup> Respondent is of the view that sanction has been obtained from the Supreme Court of India. The 3<sup>rd</sup> Respondent stated, as per letter No.G3. 4380/2013, dated 16.12.2013 that sanction has been obtained from the Supreme Court of India.

4.8 It is respectfully submitted that the Respondents 2 to 4 under the guise of Tiger Conservation Plan has proposed to destroy 20 acres of wildlife habitat insider the Periyar Tiger Reserve. The said construction activities are violation of the Forest (Conservation) Act, 1980 and without conducting any environmental impact assessment as contemplated by the Kerala State notification No. G.O. (P). No. 13/78, dated 13-1-1978. If the said constructions are allowed to be proceeded with it will cause serious impairment to Periyar Wildlife Sanctuary. Pointing out the above facts



this Applicant has sent a representation on 6<sup>th</sup> August, 2013. But no action is taken. On the other hand the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are proceeding with the construction activities in the Sanctuary. It is respectfully submitted that the above development of land for car parking and constructions will cause serious threat to the wildlife ecology of the area. No clearance has been obtained under the Forest (Conservation) Act, 1980 for this purpose and as such the present activity is without clearance and hence illegal.

4.9 It is submitted that the Respondents are continuing with construction activity in the reserve without obtaining mandatory clearances. The Respondents are progressing with the construction and unless restrained by this Hon'ble Tribunal, they will continue with the construction and present this Hon'ble Tribunal with a fait accompli, to the detriment of the environment and ecology of the area. The balance of convenience lies in favor of the petitioners as no prejudice will be caused to the Respondents if restrained from committing an illegality sans mandatory clearance. However, the petitioner and the environment will be put to serious prejudice if the



Respondents are not restrained from continuing their illegal activities in the reserve.

**5. GROUND**

5.1 Under the Forest (Conservation) Act, 1980, the Respondents 2 to 4 have no right to use forest land for non-forestry purposes like development of land for car parking, construction of buildings, etc under the guise of Tiger Reserve. The activities undertaken are non-forestry activities. Such activities will adversely affect the wildlife and the forest ecology.

5.2 No Environmental Impact Assessment as contemplated by the notification No. G.O. (P) No.13/78, dated 13-1-1978 by the State Committee on Environmental Planning and Co-operation was conducted by the Respondents in respect of the proposed development and constructions at the Periyar Wildlife Sanctuary, Thekkedy.

5.3 The development and constructions will seriously affect the ecology of the sanctuary. Such type of developments is violative of the provisions of the Constitution of India.

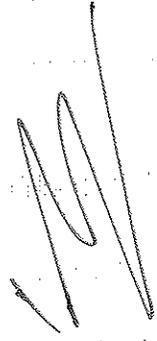
5.4 No clearance under the Forest Conservation Act, 1989 has been obtained.



- 5.5 The Respondents ought not to commence any activity prior to the obtainment of such clearance.
- 5.6 The Respondents have not considered the impact of the proposed structures and the attendant destruction of trees and forest areas.
- 5.7 The Respondent's conduct is contrary to the principles of sustainable development, inter generational equity and precautionary principle.
- 5.8 The Respondent's actions detrimentally affect the wildlife in the reserve.
- 5.9 The Respondent's project is not connected with tiger conservation but economic exploitation.

6. **LIMITATION:**

That the Respondents 1 to 4 are engaged in the activities of development of forest land inside the Periyar Tiger Reserve in Thekkady in Idukki District in Kerala State by developing land and other constructions without obtaining the necessary clearance in violation of the provisions of the Forest (Conservation) Act, 1980 and the petitioner when came to know of it made a representation on 6<sup>th</sup> August, 2013 and the 3<sup>rd</sup> Respondent has commenced the construction from 1<sup>st</sup> February, 2014 onwards and the



illegal activity of the Respondents continues as on date. Hence the present Application is within the time of limitation as prescribed under Section 14 (3) of the National Green Tribunal Act, 2010.

**7. INTERIM PRAYER**

In view of the above mentioned contentions, the Applicant herein most respectfully prays that this Hon'ble Tribunal may kindly be pleased to direct the Respondents 2 to 5 not to proceed with the development and construction activities of the Periyar Tiger Reserve in Thekkedy, Idukki District, Kerala State pursuant to the order F.No.1-14-2011-NTCA, dated 21st March, 2013 pending the disposal of the above application.

**8. PRAYERS:**

In view of the above mentioned contentions, the Applicants herein most respectfully prays that this Hon'ble Tribunal may kindly be pleased to

- (a) All the present application by directing the Respondents 2 to 5 not to make development or construction activities in the Periyar Tiger Reserve in Thekkedy, Idukki District, Kerala State pursuant to the order F.No.1-14-2011-NTCA, dated 21st March, 2013.



(b) Direct the 1<sup>st</sup> Respondent to assess the damages that has already been caused to the Periyar Tiger Reserve in Thekkady Idukki District, Kerala State in view of the development and construction activities ride by them pursuant to the order F.No.1-14-2011-NITCA, dated 21<sup>st</sup> March, 2013 and recover the same from the concerned persons arid to restore the ecology in the same manner as was before the said order;

(c) Pass such other orders or direction which this Hon'ble Tribunal may deem fit, proper, and necessary in the circumstances of the case.

Applicant

Counsel for the Applicant

#### VERIFICATION

I, M.S. Thankappan, aged 67 years, Son of M.Santhamanthan, Manthanam House, Thamarakandom Road, Thekkady P.O. Idukki District, do hereby verify that the contents of paras 4.1 to 5.3 are true to my personal knowledge and Paras 6 and 7 are believed to be true on legal advice and that I have not suppressed any material fact.

Date: 27.02.2014  
Place: Ernakulam

Signature of the Appellant

// True Copy // *E. V. V. V. V.*

This is the true copy of the document produced herewith and marked as Exhibit / Annexure. *R.3(1)*

*[Signature]*  
Spl. Govt. Pleader (Forest)

ITEM NO. 14

COURT NO. 6

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s) 19581-19582/2017

THE STATE OF TAMIL NADU

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 04-12-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)

Mr. Rakesh Dwivedi, Sr. Adv.  
Mr. Subramaniam Prasad, Sr. Adv.  
Mr. G. Umapathy, Adv.

For Respondent(s)

Mr. Ranjith Thampar, AAG.  
Mr. G. Prakash, Adv.  
Mr. Jishnu M.L., Adv.  
Ms. Priyanka Prakash, Adv.  
Ms. Beena Prakash, Adv.  
Mr. Vijay Shankar V.L. Adv.  
Mr. K. V. Vijayakumar, AOR  
  
Ms. Pinky anand, ASG.  
Mr. Pranay Ranjan, Adv.  
Mr. Ballendu Shekhar, Adv.  
Mr. Diksha Rai, Adv.  
Ms. Saudamini Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Issue notice.

Learned counsel for the Union of India as well as State of Kerala accept notice. Replies be filed within four weeks. In the meantime, no permanent construction shall be made.

However, this order will not prevent the State of Kerala from erecting temporary structures in connection with construction of ticket counters, cafataria, etc.

Validated  
MALA KUMARI SHARMA  
DATE: 04/12/2017  
PAGE: 2/1

(B. PARVATHI)  
COURT MASTER

(MALA KUMARI SHARMA)  
SPRANCE OFFICER

This is the true copy of the document produced herewith and marked as Exhibit Annexure.....

*[Handwritten signature]*

Spl. Govt. Pleader (Forest)