

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

APPLICATION No. 61 of 2022 (SZ)

Mugasi Anumanpalli Village Panchayat
Rep by is President and 9 others

...Applicants

Vs.

Union of India
Rep. by its Secretary,
The Ministry of Environment, Forests
and Climate Change,
New Delhi and 10 others

...Respondents

ADDITIONAL COUNTER AFFIDAVIT FILED ON BEHALF OF THE
11th RESPONDENT

I, T.Muthusamy @ Subbu, son of late Thulasimani, Hindu, aged about 53 years, the district Secretary of the Tamizhaga Vivasayikal Sangam, having office at No.602/487, Perundurai Road, Erode-638011, now temporarily come to Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I submit that I am the District Secretary of the Tamizhaga Vivasayikal Sangam, the 11th respondent herein. I am aware of the facts of the case.

2. I submit that the main application filed under Section 14 of the NGT Act by the applicants was hopelessly barred by limitation. I submit that since the main application itself is barred by limitation the question of limitation may be taken up first for consideration.

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Erode District Secretary

Tamilaga Vivasayikal Sangam
Tamilaga Vivasayikal Sangam

T. Muthusamy

Secretary
Erode District Secretary

3. I submit that this Hon'ble Tribunal has powers to adjudicate the disputes as enunciated under Sec.14 of the NGT Act, which reads as under :

"14. Tribunal to settle disputes. –

1. The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

2. The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

3. No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days".

4. I submit that in view of Sec.14 (3) of the NGT Act, 2010, no application for adjudication of dispute under this section shall be entertained by this Hon'ble Tribunal unless it is made within a period

of six months from the date on which the cause of action for such dispute first arose. The proviso to the said section states that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

5. I submit that the reliefs sought for in the main application are as follows :

- i) Declare all the actions of the State of Tamil Nadu in implementing the proposed project as per G.O.Ms.276, Public Works Department dated 09.11.2020 for concrete lining of Lower Bhavani Project canal by uprooting the 4 Lakh trees, in the name of Extension, Renovation and Modernisation of Lower Bhavani Sub Basin Project System, without obtaining prior Environmental Clearance and permissions, as illegal and violative of the Environment (Protection) Act, 1986 and 2006 Notification as amended,
- ii) Direct the respondents 1 and 2 to undertake detailed environmental study on the proposed project as per G.O.Ms.276, Public Works Department dated 09.11.2020 by holding Public consultation, Environmental Impact Assessment Study and
- iii) Restrain the project proponent from carrying on any construction activities in the entire stretch of the LBP canal, until the 3rd respondent obtains necessary Environmental

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Clearance from the appropriate authority in the manner known to law.

6. I submit that in this case the Principal Secretary to Government, Water Resources Department, the 3rd respondent herein has accorded sanction to entrust the work to the Chief Engineer, Water Resources Department, Coimbatore Region, for execution of the Extension, Renovation and Modernisation of Lower Bhavani Sub-Basin Project System works, vide, its G.O.Ms.No.276 Public Works (W1) Department dated 09.11.2020.

7. I submit that subsequently the Government of Tamil Nadu issued Tenders for the six packages separately in the month of December, 2020. I submit that after finalizing the tender process, the works were entrusted to the successful bidders in January, 2021. I submit that from the information dated 08.06.2022 furnished by the Public Information Officer/Assistant Executive Engineer, W.R.D, Lower Bhavani Basin Division, Erode, the work was first commenced as early as on 25.02.2021.

8. I submit that the cause of action for filing the main application arose first in this case on 09.11.2020, when the G.O.Ms.No.276 Public Works (W1) Department was issued. I submit that even the commencement of the work was taken into account as the cause of action, the cause of action was first arose on 25.02.2021. But then, the above application was filed only on 24.05.2022. I submit that from either dates (09.11.2020 or

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25.02.2021) the main application was filed after the period of more than one year. I submit that submit that from the said facts it would be quite clear that the application filed by the applicants was hopelessly barred by time.

9. I submit that the applicants are well aware that the application is not within the period of limitation. In respect of the aspect of limitation, the applicants have tried to explain the same by averring that the cause of action is a recurring one and continues till date since the respondents are continuing to proceed to cut/uproot the trees in detriment to the environment each and every day and the application is well within limitation. I submit that for the purpose of reckoning the limitation of Section 14 (3) of the Act, the averments made by the applicants as above are wholly irrelevant and of no consequence since the concept of continuing or recurring cause of action is foreign to the expressed provisions of the statute of limitation engrafted under Section 14 (3) of the Act. I submit that the NGT Act is a special enactment and hence, there is statutory prescription of the special period of limitation under Section 14 (3) of the Act, which excludes the general law of limitation.

10. I submit that the concept of recurring cause of action cannot be made applicable to the present factual position and that too when there is a specific bar against entertaining the application, if it is not within a period of limitation prescribed under Section 14(1) of the NGT Act. I submit that the words "first arose" in Section 14 (1)

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which are indicators of the unambiguous legislative intent and that while the expressed provisions of the statute of provision under Section 14 (1) of the NGT Act is so clear, the concept of recurring cause of action as put forth by the applicants has no application at all and hence the main application is hopelessly barred by limitation.

11. It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss the main application as barred by limitation and devoid of merits with exemplary cost and thus render justice.

Thamilaga Vivasaiagal Sangam

R. muthu

Erode District Secretary

Solemnly affirmed at Chennai on this 12th day of September, 2022, the contents of this affidavit have been read over and explained to the deponent in Tamil who being unacquainted with English and appeared to have understood the same and signed his name in my presence.

Before me

Ch. A. Kumar
(Q.No. 39/1989)

Advocate, Chennai
Madras Bar Association
High Court, Madras

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ON BEHALF OF THE 11th RESPONDENT**

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