

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Original Application No.75 of 2020 (SZ)

(Through Video Conference)

IN THE MATTER OF

Tribunal on its own motion

Suo Motu based on the news item

in The Hindu Newspaper dated 30.05.2020,

“Kerala Forest Department told to permit sand

Removal from Pampa”

...Applicant(s)

Vs.

Chief Secretary of Kerala

Government Secretariat

Central Stadium, Mahatma Gandhi Road,

Thiruvananthapuram, Kerala and Ors.

...Respondent(s)

SHORT AFFIDAVIT ON BEHALF OF UNION OF INDIA THROUGH
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
(RESPONDENT NO.8)

1. I Anjankumar B.N S/o Narayana .T aged 40 years working as Assistant Inspector General of Forest (Central) in Ministry of Environment, Forest and Climate Change, Integrated Regional Office Bangalore (hereinafter referred as 'MoEF&CC'), and as such I am fully aware of the facts and circumstances of the case from the relevant records available in this office. I further state that the present affidavit is being filed after perusing the office records, which to my knowledge are true and correct, and I am authorized to file this affidavit on behalf of the Respondent No. 8 (MoEF&CC).
2. That I have perused the contents of the application filed by the applicant/s and I am duly authorized to depose by way of the present affidavit. At the outset, I deny all the averments by the applicant except those that are specifically admitted here in.
3. It is humbly submitted that in case the Hon'ble Tribunal desires technical/specialized information, an expert from the Ministry can be produced subject to the direction of the Hon'ble Tribunal.



Statement of Facts

1. It is humbly submitted that the 'land' is a subject matter of State Government. The forest areas and the legal boundaries thereof are determined and maintained by the concerned State Government. That, *inter alia*, being the repository of land records, State Government has the primary responsibility to determine status of any parcel of land, giving due regards to gazette notifications, provisions under State and Central Acts and concerned judgements and directions of the Hon'ble Supreme Court.
2. In the instant matter the Hon'ble NGT vide order dated 25.06.2021 has directed the following; *"Considering the fact that there is an important issue arose as to whether permission under Forest Conservation Act is required for such activities or Disaster Management Act will over-ride the Environmental Laws, we feel the view of MoEF&CC is also required as they are the persons to accord sanction, if any, required for such purposes applied for."*
3. Apparently, from the above direction, it seems that there is ambiguity in considering over-riding effect between the provisions of Forest (Conservation) Act, 1980 and National Disaster Management Act, 2005.
4. That the answering respondent, in view of the aforesaid ambiguity in the face of law, has vide letter dated 23.09.2021 requested the Department of



Legal Affairs, Ministry of Law and Justice to provide their legal opinion in the matter, so that an appropriate reply can be filed in the Hon'ble Tribunal. It is further submitted that the reply from the Ministry of Law and Justice, in this regard, is awaited. Copy of the letter dated 23.09.2021 herein attached as **Annexure A1**.

5. That, the answering respondent reserves the right to file additional affidavit before the Hon'ble Tribunal, if required till Pendente lite.
6. Thus in light of the above submissions, it is most humbly prayed that this Hon'ble Tribunal may kindly pass such order(s) as deemed fit and proper in the facts and circumstances of the case.



DEPONENT

श्री बी. एन. अंजन कुमार
Shri B.N. Anjan Kumar
सहायक वन-महानिरीक्षक(कें)
Assistant Inspector General of Forest (C)
भारत सरकार/Government of India
पर्यावरण वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
एकीकृत क्षेत्रीय कार्यालय
Integrated Regional Office
बेंगलूरु/Bengaluru.

VERIFICATION:

I, the above named deponent do hereby verify that the contents of the above affidavit are true and correct to my knowledge and are based on official records and nothing material is concealed therein.

Verified at Bengaluru on this 30th Day of September, 2021.



DEPONENT

श्री बी. एन. अंजन कुमार
Shri B.N. Anjan Kumar
सहायक वन-महानिरीक्षक(कें)
Assistant Inspector General of Forest (C)
भारत सरकार/Government of India
पर्यावरण वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
एकीकृत क्षेत्रीय कार्यालय
Integrated Regional Office
बेंगलूरु/Bengaluru.

Government of India
Ministry of Environment, Forest and Climate Change
(Forest Conservation Division)

Indira Paryavaran Bhawan
JorBagh Road, Aliganj
New Delhi-110003

Dated: 23rd September, 2021

Office Memorandum

Sub: In the matter of O.A. 75/2020 Tribunal on its own motion *suo motu* based on a News Item in Hindu Newspaper dated 30.05.2020, Kerala Forest Department told to permit sand removal from pampa by District Collector of Kerala, and others in Hon'ble National Green Tribunal (SZ), Chennai-Reg.

1. This is in reference to the above subject matter wherein the Hon'ble National Green Tribunal (SZ) (*hereinafter referred to as NGT*) observed that in the guise of using the provisions of Disaster Management Act 2005 (DMA 2005), the State of Kerala is trying to carry out stream mining by way of desilting without getting necessary clearances from the Forest Department. To address this issue a Joint Committee was also formed by the NGT. The Committee in their report could not make any clear recommendation due to lack of unanimity in the views of the members.
2. As per the provision of Section-2 of the Forest (Conservation) Act, 1980 (FCA 1980) prior approval of the Central Government is required for carrying out any non-forestry activity on forest land.
3. It is pertinent to mention that the removal of sand or debris from the rivers, during 2019, was earlier done after obtaining clearance under FCA 1980. But same clearance was not obtained for the removal of debris in Pamba and Kakki rivers in 2020.
4. It is mentioned that the DMA 2005 is an Act that provides for the effective management of disasters and for matters connected therewith or incidental thereto, whereas the FCA 1980 is a special Act, which is regulatory in nature.
5. The FCA 1980 mainly deals with the challenges of deforestation and intends to exercise check on indiscriminate change in land use from forest to non-forestry purposes which may cause ecological imbalance and lead to

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23/09/2021

environment degradation. In order to avoid future ecological disasters, due to unscientific change in land use of any forest land, and to facilitate sustainable development in the country the provisions of FCA 1980 are being followed. It has specific process under which an expert advisory committee analyzes the project proposal that requires the forest land for non-forestry purposes. The analysis is done on the basis of field data and other scientific/field reports/inputs on the area. After thorough deliberation and due diligence the committee offers its advise/recommendation to the competent authority for a final decision on request of non forestry use of forest land. Based on its analysis the committee also prescribes appropriate measures to mitigate the possible negative impact of proposed change in land use.

6. It is true that both the Acts above have non-obstante clauses. Hon'ble Supreme Court time to time has observed, *inter alia*, the following with regard to non-obstante clauses in any two Acts.

i. In the matter of Bank of India Vs. Ketan Parikh 2008 (8) SCC 148:

"...But cases might arise where both the enactments have the non-obstante clauses, then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose covered by the contingencies, then notwithstanding that the Act might have come at later point of time still the intention can be ascertained by looking the objects and reasons."

ii. In the matter of RBI vs. Peerless General Finance and Investment Co. Ltd. (1987) 1 SCC 4241:

".....interpretation must depend on the text and the context. They are base of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses provided by the context. With these glasses the court must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

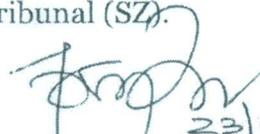
7. In the instant matter, as given at para-1 above, the Hon'ble NGT vide vide their

order dated 25.06.2021 (**copy enclosed**) have directed the following;

"Considering the fact that there is an important issue arose as to whether permission under Forest Conservation Act is required for such activities or Disaster Management Act will over-ride the Environmental Laws, we feel the view of MoEF&CC is also required as they are the persons to accord sanction, if any, required for such purposes applied for."

8. Apparently, from the above direction of the Hon'ble Tribunal, it seems that there is ambiguity in considering over-riding effect between the provisions of FCA 1980 and NDMA 2005.

In view of the aforesaid, the Department of Legal Affairs, Ministry of Law and Justice is requested to kindly provide their legal opinion in the matter, so that an appropriate reply can be filed in the Hon'ble National Green Tribunal (SZ).


(Anjan Kumar Mohanty) ^{23/09} 2021
Inspector General of Forests

To:

The Addl. Secretary,
Department of Legal Affairs, Ministry of Law and Justice,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110001