

**BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI****Application No. 09 of 2017**

Mr. Y. V. Pratap Reddy

....Applicant

Vs.

The Union of India and 8 Others

....Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF THE 9<sup>TH</sup> RESPONDENT**

In addition to the oral arguments advanced, the 9<sup>th</sup> Respondent seeks leave to file this written submissions:

**BACKGROUND FACTS:**

1. The Original Application is filed challenging the installation of 12 wind mills in Sy.no. 1036/1 (subdivided as Sy.no. 1174 to 1185) in 30 acres of land in Mallela Village and proposed installation of 4 wind mills in Sy.no.1 (sub divided as Sy.no. 506 to 509) in 10 acres of land in Udavagandla Village. The properties, having a total extent of 40 acres, lie as one block in two adjoining villages of Thondur Mandal, Y.S.R District.

2. The Applicant states that he is an agriculturist of Thondur Village in Cuddapah District and out of "occupational affairs" frequents the project area. In August, 2016 he noticed that several wind mills were being erected in forest areas. The reliefs are sought on the footing that the project activity does not have clearance under Section 2 (ii) of the Forest (Conservation) Act, 1980.

3. On 15-6-1893, Notification no.269 was issued under the Madras Forest Act - V of 1882 notifying the Mallela North Forest Reserve and Mallela South Forest Reserve, after identifying forest land in the area.

***[Doc no.1 in typed set of R9- Page 1 to 8]***

4. An extent of 2163 acres of land in the two adjoining Villages of Mallela (1568 acres in Sy no.1036/1) and Udavagandla (595 acres in Sy no.1), lying as a single block of land with similar physical features, was not included in the notification. ***[Reply of R4- Para 3, 4]***

5. At the time of resurvey and resettlement of lands, 1568 acres in Mallela village was classified as Government lands with the remark 'Forest Reserved' and the 595 acres in Udavagandla village as Government land with the remark 'Hill'.

***[Doc no.1 to 4A in typed set of Applicant - Pages 1 to 16]***

6. A Perusal of the remarks column at Page 13 of the typed set of the Applicant indicates entries like 'Hill', 'Stream', 'Hillock', 'Road' and 'Forest Reserved'. These are obviously observations made by the officials. They are not made as part of a statutory classification, either under the Forest related or Survey related laws. Suffice to say that even in 1893, the features of a Forest were noticed only in some areas and the same was duly notified as Reserved Forest.

7. In short, even a century ago the land in question was not notified under the forest laws as it did not have the features of a forest. The adjoining properties with the features of forest land were notified in 1893 itself after the process of identification and demarcation of the Government lands in the area. The exclusion from notification was thus a conscious action. The issue arising in this case is whether there is cause to revisit such exclusion made in 1893 based on fact and law with reference to the Forest (Conservation) Act, 1980.

**Project:**

8. The Energy (RES) Department of the Government of Andhra Pradesh issued G.O.(Ms).No.48, dated 11.04.2008 and G.O.(Ms).No. 99 dated 09.09.2008, with the object of encouraging optimum utilization of the available wind power potential in the State by facilitating adoption of State of art technology through private participation.

***[Sl. no.2 and 3 in Additional typed set of R9- Page 5 to 9 and 11-12]***

9. The allotment of Government land is under a land allotment policy framed by the Government of Andhra Pradesh.

***[Sl no.4 in Additional typed set of R9- Pages 13 to 19]***

10. The New and Renewable Energy development corporation of Andhra Pradesh (NREDCAP for short), a Government of A.P. enterprise installed a

wind mast in the two bits of Government waste land aforesaid and determined the area as suitable for setting up wind mills.

11. The principal sanction for the allotment of 19.50 MW and and subsequent 6.42 MW Capacity Wind Power Project was issued by the NREDCAP , tasked with the authority to facilitate optimum utilization of the available wind power potential in the State and permissions were given by the Government of Andhra Pradesh to hand over Government lands as per the AP Wind Policy, 2015 to NREDCAP and in turn Private Developers. It was further ordered that advance possession of the lands could be handed over.

***[Sl. no.5, 6 and 7 in Additional typed set of R9- Page 20, 21 to 24 and 25]***

***[Sl. no.14 in Additional typed set of R9- Page 36 to 43]***

***[Sl. no.18 in Additional typed set of R9- Page 52- 53]***

**CHRONOLOGY OF EVENTS IN HANDING OVER OF THE LAND IS AS FOLLOWS:**

- NREDCAP sanctioned the project on 29-12-2014.

***[Sl. no.9 in Additional typed set of R9- Page 27 to 30]***

- NREDCAP by letter dated 03-01-2015 requested the District Collector, Kadappa to allot 40 acres for setting up wind mills jointly to NREDCAP and R9.

***[Sl. no. 11 and 12 in Additional typed set of R9- Page 32 and 33]***

- NREDCAP permitted the transfer of the capacity in the name of M/S Atria wind power Ltd.

***[Sl. no.15 in Additional typed set of R9- Page 48 - 49]***

- The Forest department inspected the property and issued a No Objection Certificate on 12-03-2015.

***[Doc no. 5 in typed set of R9- Page 18]***

- The lease rent of Rs. 6 lacs was fixed for the property by the District Collector in May, 2015. The amount was duly paid.

***[Sl. no.17 in Additional typed set of R9- Page 50 - 51]***

***[Sl. no.20 in Additional typed set of R9- Page 55 to 58]***

***[Sl. no.21 in Additional typed set of R9- Page 59]***

- The land was allotted and handed over on 25-6-2015.

**[Doc no.7 in typed set of R9- Page 21]**

**[Sl. no.23 in Additional typed set of R9- Page 62]**

**[Sl. no.24 in Additional typed set of R9- Page 63 - 64]**

12. In all, 15 windmills were commissioned in 2016. The total project cost amounts to Rs.2,19,00,00,000/- (Rupees Two Hundred and Nineteen Crores only) and the same is funded through a term loan of Rs. 1,64,25,00,000/- (Rupees One Hundred and Sixty Four Crores Twenty Five Lakhs only). The promoter's contribution amounts to Rs.54,75,00,000/- (Rupees Fifty Four Crores Seventy Five Lakhs only) and the Loans outstanding as on date is Rs.1,49,33,00,000/- (Rupees One Hundred and Forty Nine Crores Thirty Three Lakhs only).

**[Counter of R9- Para 14,15]**

**[Additional Affidavit of R9- Para 5]**

13. A total of 376,712,300 kwh/units of Energy have been generated from October 2016 to August 2021. The power generated is being sold to different companies at different tariffs. Presently power is being supplied after entering into wheeling and banking agreements with APTRANSCO. The companies being supplied with power now are:- A One Steels India Pvt. Ltd.; Brakes India Ltd.; Malladi Drugs & amp; Pharmaceuticals; and Nelcast Ltd.7. According to the International Energy Agency (IEA), an average value for 600g/kWh carbon dioxide reduction will be obtained from wind generation. Considering Atria project generation, as on date at a total of 376,712,300 kwh/units, CO2 reduction is calculated at 249152.52 tons (0.249 million tons of CO2). This is a most environment friendly project.

**[Additional Affidavit of R9- Para 6]**

14. It is evident from the narrative that the decision to implement the project is based on the policies of the Government of Andhra Pradesh and is based on joint action by various departments of the Government, including the Forest department. R9 is only a lease of the property of the Government who has invested in the project based on the sanctions/permissions accorded by the Government at every stage of the process.

15. Steps were taken by the Forest Department to cancel the order. The *volte face* by the Forest department Proceedings led to the litigation. The present application is filed on 19-01-2017.

**[Doc no.4 to 11 in typed set of Applicant - Pages- 19 to 27]**

**ISSUES:**

1. Is there any subsequent development of the features of forest in this parcel of land to review the exclusion made in 1893 and to notify/recognize the land as forest land for the purposes of the Forest (Conservation) Act, 1980?
2. What is the relevance/ significance of the non statutory noting in a Government record in respect of 30 acres as '*Forest Reserved*' and 10 acres as '*Hill*' in the light of the judgment in **T.N.Godavarman AIR 1997 SC 1228 = 1997 ( 2 ) SCC 267?**
3. What is the relevance/ significance of the noting in a Government record in respect of 30 acres as '*Forest Reserved*' post the process of identification that the property is not Forest land by the State after completing the processes contemplated by the judgement in **T.N.Godavarman AIR 1997 SC 1228 = 1997 ( 2 ) SCC 267?**
4. When the identification contemplated by the judgment reported in **T.N.Godavarman 1997 ( 2 ) SCC 267** has been undertaken by the State and neither the criteria nor the decision (that the land need not be notified as a Forest) is under challenge, is it legal and proper to collaterally hold that the land is forest land and Forest (Conservation) Act, 1980 applies?

**MAINTAINABILITY OF THE APPLICATION:**

1.1 This Application is part of a serial challenge to the project on the same grounds. W.P.No. 273 of 2015 was filed before the Hon'ble High Court of Andhra Pradesh and Telengana by Sreenivasalu Reddy and two others and the same was withdrawn (Para 8 of the Application). W.P.No. 14 of 2016 was filed by Devireddy Manohar Reddy and it was withdrawn with liberty to approach this Hon'ble Tribunal in two weeks. The Applicant is his associate but the liberty reserved in the Judgment does not enure to the Applicant.

**[Doc no.17 in typed set of R9- Page 64 to 70]**

1.2 The Application is belated, the project having been substantially completed long before the filing of the Application. This is not a bonafide application filed in public interest. The Petitioner appears to be a busy body and has not established his bonafides in approaching this Hon'ble Tribunal.

1.3 Until and unless the land is established to be a Forest land, the jurisdiction of this Hon'ble Tribunal is not attracted.

**LAND NOT NOTIFIED AS FOREST POST- T.N.GODAVARMAN JUDGMENT:**

2.1 In terms of the interim order in **T.N.Godavarman AIR 1997 SC 1228 = 1997 ( 2 ) SCC 267 Para 4**, a Forest is

- (i) Statutorily recognized as a Forest or
- (ii) is a Forest as understood in the dictionary sense but also
- (iii) any area recorded as a Forest in any Government record.

2.2 The order (Para 5.5) further directs the States to identify/determine the Forest areas in the respective states through an expert committee. This exercise was expected to be completed expeditiously (30 days) so that the identified areas can be notified as Forests at the earliest.

2.3 The Judgment does not in any manner interfere with the prerogative of the States to identify the forest lands under the respective State laws and based on local conditions. Hence, the States have adopted their own criteria to identify forests. The State of Andhra Pradesh has used the criteria of 0.4 density as the relevant test.

2.4 The process of identification has been taken up/completed in most States, including Andhra Pradesh as more than two decades have passed since the directions were issued. In Andhra Pradesh, post **T.N.Godavarman reported in AIR 1997 SC 1228 = 1997 (2) SCC 267** large tracts of land came to be notified as Forest over the years as part of this process in the Proddatur forest division. Several extents are to be notified and some lands are at the proposal stage. It is evident that the Forest department had not proposed any notification in respect of this particular parcel of land.

***[Doc no. 19 in typed set of R9- Page 72 to 89]***

2.5 The land involved in the present case is not a statutorily recognized Forest under any law. The parcel of land in this case is certified to be not statutorily notified as a Forest, on date.

***[Doc no. 18 in typed set of R9- Page 71]***

2.6 The land involved does not have any of the features of a Forest going by the dictionary meaning of that word. This is evident from the joint inspection report of the Revenue and Forest departments.

**[Doc no. 16 in typed set of R9- Page 50 to 63]**

**REPORT SUBMITTED BY THE CHIEF SECRETARY EVIDENCING "NIL" TREE GROWTH:**

3.1 In pursuance to the order of this Hon'ble Tribunal, the report dated 10-12-2021 submitted by the Chief Secretary after a meeting of various department heads held on 23-11-2021 also evidences that there is nil tree growth and the property is rocky land that cannot support tree growth. It is also stated that the property is not identified as Forest land and that the land is not proposed to notified as a forest. Since the land involved does not have any of the features of a Forest the report of the Chief Secretary cannot be faulted.

**EXPANSIVE INTERPRETATION IN *T.N. GODAVARMAN* AND FURTHER CLARIFICATION BY THE SUPREME COURT:**

4.1 The prerogative of the State Government to identify forest land is maintained in the decision in *T.N.Godavarman reported in AIR 1997 SC 1228 = 1997 (2) SCC 267*. There is no case for the Applicant in the OA that the process of identification by the State Government pursuant to *T.N.Godavarman reported in AIR 1997 SC 1228 = 1997 (2) SCC 267*. was not conducted properly or that some areas in Proddatur forest division, though a forest, were not being notified as forests. In short, there is neither a direct nor a collateral challenge to the stand of the Government of Andhra Pradesh that this parcel of land is not a forest and is not intended to be notified as a forest. Hence, the categorical statement on behalf of the State Government has to be accepted.

4.2 The expansive meaning of Forest in *T.N.Godavarman* reported in *AIR 1997 SC 1228 = 1997 (2) SCC 267*. has great relevance till the process of identifying forest land is undertaken by the States. However, once the State has completed the process of identification then only the lands identified and consequently notified as Forest will be subject to the rigour of the Forest (Conservation) Act, 1980. This is evident from clarification issued by the Hon'ble Supreme Court in *T.N.Godavarman* on 8-9-2016 Pages 15 and 16, a

parcel of land that is not notified as Forest under a statute cannot be classified as Forest land, warranting clearance under Section 2 (ii) of the Forest (Conservation) Act, 1980.

4.3 These aspects are considered in ***T.N.Godavarman reported in 2006 (4) JT 557 Para 2,3,30*** and the subsequent enquiry was utilized to uphold the allotment of land to Maruti. The broad principles initially issued have to be applied in *presentaei* only based on a positive identification of the parcel of land as a Forest.

#### **DISTINCTION BETWEEN 'FOREST LAND' AND 'FOREST RESERVED':**

5.1 The remark in the present case is of 'Forest Reserved' and 'Hill'. As far as 'Hill' is concerned it does not attract the forest laws even by nomenclature. The concept of Forest land and Forest Reserved are different. As explained in the report dated 10-12-2021 submitted by the Chief Secretary, after a meeting of various department heads held on 23-11-2021, Forest Reserved only denotes that it is merely earmarked for future development as a Forest. It is noted that there is potential to convert it into a forest land. Hence, 'Forest Reserved' is not 'Forest'.

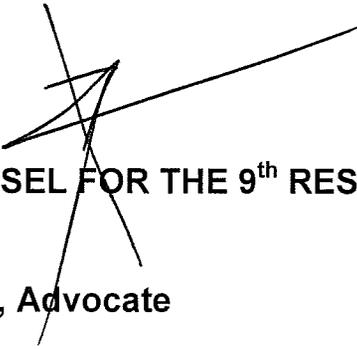
5.2 In order to attract ***T.N.Godavarman reported in AIR 1997 SC 1228 = 1997 (2) SCC 267*** the property must be noted as 'Forest' in the Government record. In ***A. Narendraraja Vs. Govt. of Andhra Pradesh, reported in 2008 (4) ALT 805 Para 5, 8, 9, 10 to 15 and 18 to 22*** it was held that Adavi Porampoke or Forest Porampoke is not Forest. Hence, 'Forest Reserved' as explained in the in the report dated 10-12-2021 submitted by the Chief Secretary after a meeting of various department heads held on 23-11-2021 is not Forest.

5.3 A mere remark in a Government record, made a century ago cannot be the basis for classifying the land as a Forest as held in ***B.S.Sandhu reported in (2014) 12 SCC 172 Para 16 to 24***. As held in that case the status of a large parcel of land (3700 acres in one village in the reported case and 2163 acres of land in two villages in the present case) as a Forest cannot be concluded on the basis of a remark in an old Government record.

5.4 The distinction between land notified as a forest and which is not notified as a forest under the State law as also the distinction between land identified by the State as a Forest land based on the processes contemplated by *T.N.Godavarman* reported in *AIR 1997 SC 1228 = 1997 (2) SCC 267* and land which is not so identified cannot be blurred in a collateral manner through the present application.

It is therefore prayed that this Hon'ble Tribunal may be pleased to dismiss Application No. 09 of 2017, with costs in favour of this respondent and pass such further or other orders as this Hon'ble Tribunal may deem fit in the circumstances and thus render justice.

Dated at Chennai this the 20<sup>th</sup> day of December, 2021



COUNSEL FOR THE 9<sup>th</sup> RESPONDENT

Arguments drawn by: **Mr. Rajnish Pathiyil, Advocate**

Settled by: **Mr. P.B. Krishnan, Advocate**

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**Mr. RAJNISH PATHIYIL  
Counsel for the 9<sup>th</sup> Respondent**