



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 168/2017(WZ)

Mr. Omkar Ajit Keni ... Applicant

Versus

The Deputy Conservator of Forests, Sawantwadi & Ors

ADDITIONAL AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT No. 1

The Respondent No.1 most respectfully brings to the notice of Hon'ble NGT that Respondent No.1 has already submitted his detailed affidavit in reply & submitted details of the factual position in the case before this Hon'ble Court dated 26th September, 2018.

It is submitted that the present application is filed by the applicant on 12/10/2017 complaining dumping of wastes like plastic, alcohol bottles, carcass of birds/ animals etc., and hunting of wild animals especially the endemic species and throwing or leaving the

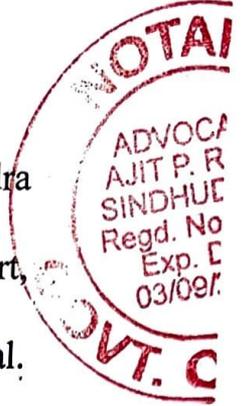
Ajith Rane

remains of the animal bodies etc. near the Kasartaka site which is situated near the Dhamapur lake in the reserved forest area.

It is submitted that third party namely Shri. Pramod Ravindra Dhuri has filed the PIL No. 97 of 2010 before the Hon'ble High Court, Bombay alleging the construction of Eco-Tourism centre as illegal. The Respondent No. 1 is party respondent to said PIL No. 97 of 2010 and has filed detailed reply in said case. The copy of the said PIL No. 97 of 2010 is annexed hereto & marked as **Annexure- 'R 1'**.

The Hon'ble High Court upon hearing the submissions of the Respondent No. 1 in said PIL No. 97 of 2010 granted a stay on the demolition of above said Eco-Tourism Centre by its order dated 03/02/2015. The copy of said order dated is annexed herewith & marked as **Annexure 'R 2'**.

The said order is continued even today as the said PIL No.97 of 2010 is pending for hearing & final decision before the Hon'ble High Court, Bombay. The copy of the status report showing case details taken from official website of Hon'ble High Court of Bombay of PIL No. 97 of 2010 as on 27/03/2023 is annexed herewith & marked as **Annexure 'R 3'**.



A. S. Sankar

Considering the factual situation the present application deserves to be dismissed with heavy costs.

Amrut Shinde

VERIFICATION

I, Mr. Amrut Pandurang Shinde, Age- 34 Years, Occupation- Assistant Conservator of Forests (Exploitation by Govt. Agency & Wildlife), Sawantwadi, solemnly make on oath and said that all the contents in the affidavit are true and correct to the best of my knowledge and beliefs and the information is derived from the office records and I have signed this day of 28 March, 2023 at Sawantwadi.

Hence, this verification.

Amrut Shinde

Authorised Officer

for the Respondent No. 1



Filed on 28 day of March, 2023

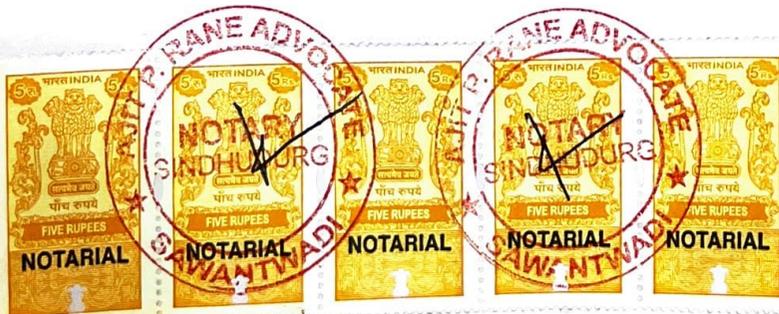
At- Sawantwadi

This document has been personally presented & Signed by Amrut Pandurang Shinde R/o Sawantwadi

who is identified by —

Notary Regd. No. 354/2023

Total Pages 03 (Three) Date 28/03/2023



BEFORE ME

Ajit P. Rane
AJIT P. RANE
B.S.L.L.B. (spl)
Advocate & Notary
New Salaiwada, Sawantwadi

Amruteshwar

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by respondent no.2 for Sawantwadi.

- 5. Exh.'C'
Copy of report dated 16/1/2010 submitted by committee of Collector Sindhudurg and Chief Conservator of Forests (PT & SP) Maharashtra State, Nagpur to Principal Secretary (Forests), Govt. of Maharashtra. **33 38**

- 6. Exh.'D'
Copy of impugned order dated 9/4/2010 passed by respondent no.2 granting post facto sanction to the diversion of 1.25 hectares of reserved forest land for non forest purpose, as well as order dated 21/4/2010 passed by this Hon'ble Court in P.I.L. No. 2 of 2007. **39 43**

- 7. Exh. E
Copy of orders dated 11/3/2008 and 19/3/2008 Issued by Respondent No.3, along with photographs. **44 - 50**

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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

DIST : SINDHUDURG
S+11622
PUBLIC INTREST LITIGATION NO. /2010

Pramod Ravindra Dhuri

Petitioner

Vs.

State of Maharashtra and ors.

Respondents

SYNOPSIS

Sr.No.	Date	Particulars
1.		<p>The petitioner by present litigation has impugned the act of respondents in protecting illegal constructions erected by destroying reserved forest as well as guilty officers responsible for said illegality. The construction impugned interalia is an Eco Tourism Centre constructed by forest authorities in reserved forest at Dhamapur Village, Tal. Malvan, Dist. Sindhudurg by destroying reserved forest. During construction of said Eco Tourism Centre, various works such as construction of cement concrete structures like temple, children park, well, platforms for tents, restaurant, godown, administrative buildings, toilets, footpath, upgradation of cart track by asphaltting etc. was carried out, large tracts were cleared for parking and barbed wire fencing and electrification of area was carried out. The respondents permitted igniting fire in the</p>

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forest and also permitted sale of firewood to cook food in the forest.

2. The petitioner submits that one Shri Narayan Laxman Rane had filed P.I.L. No. 2 of 2007 against impugned construction. The respondents appeared and stated that the said construction was carried out under order dated 27/5/2003 passed by respondent no.2, whereby working plan of Sawantwadi was approved. It was also contended that said construction was carried out in natural blank spaces and no trees were cut. The order dated 27/5/2003 clearly states that no forests bearing naturally grown trees shall be clear felled for any purpose whatsoever. Section 5 of Chapter IV of Working Plan approved by order dated 27/5/2003 further states that small huts will be constructed at strategic points and that no cement concrete structures will be erected in the forests. It therefore is obvious that impugned cement concrete construction, electrification and barbed wire fencing in a 0.8 density reserved forest was clearly contrary to working plan and was ex-facie illegal.
3. The petitioner submits that pursuant to orders passed by this Hon'ble Court in P.I.L. No. 2 of 2007, a committee of Collector Sindhudurg and Chief Conservator of Forests (PT & SP) Maharashtra State, Nagpur was formed which visited the area and submitted its report dated 16/1/2010 to Principal Secretary (Forests), Govt. of Maharashtra. The said report states that about 146 trees were cut in serious violation of forest laws and that

J.C.B. machines were used to destroy virgin forest by authorities whose duty was to protect forest. The report also states about fixing responsibility on senior officers. The respondents, however, have not taken any action in the matter till date. The petitioner further submits that wood of said 146 trees, also, appears to have been misappropriated and no efforts are made to trace the same and/or to recover the price thereof.

4. The petitioner submits that the respondent no.1 also applied to respondent no.2 for post facto sanction to impugned construction. The respondent no.2, in gross violation of the guidelines given by apex court, by its order dated 9/4/2010 granted post facto sanction to the diversion of 1.25 hectares of reserved forest land for non forest purpose. This Hon'ble Court in the circumstances by its order dated 21/4/2010 disposed of P.I.L. No. 2 of 2007 but granted liberty to challenge the order dated 9/4/2010 passed by respondent no.2. The petitioner in said P.I.L. No. 2 of 2007 has not filed any petition till date challenging the order dated 9/4/2010 passed by respondent no.2. The petitioner submits that issue is of great importance and involves destruction of forest by officers who were dutybound to protect the same.
5. Hence present Public Interest Litigation is Filed.

POINTS

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1. The petitioner submits that respondents i.e. Union Government as well as State Government are bent upon protecting illegal Eco Tourism Centre as well as guilty officers even in defiance of successive orders passed by Apex Court as well as this Hon'ble Court. The impugned order of approval dated 9/4/2010 does not give any reason as to why said illegal cement concrete construction in a 0.8 density reserved forest was deemed fit for regularization and so also the impugned approval does not make any reference even to opinion given by Advisory Committee constituted under section 3 of Forest (Conservation) Act 1980. The impugned order smacks of unholy haste and is totally non speaking. The petitioner therefore submits that concerned authority was more interested in protecting illegal construction and guilty officers rather than protecting fragile environment of the area. The concerned authority has totally ignored that principle of sustained development and has committed gross illegality in attempting to legalize as ex facie illegal cement concrete construction in a 0.8 density reserved forest.

2. The petitioner submits that impugned permission given by respondent no.2, talks about fixing NPV of diverted forest land and recovering the cost from the agency. In present case forest is not destroyed for any commercial activity by some other person, but by forest department itself just to suit whim of some officer. In the circumstances it is not clear who will bear the cost, concerned guilty officers, or forest department will pay cost to itself. Apex Court in a series of judgments has reiterated the principle of sustainable development and has clarified that Forest Policy 1998 has statutory flavour. Apex Court further in

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various judgments viz. case of T.N.Godavarman vs. Union of India dated 30/10/2002 reported in (2002)10 SCC page 606 has emphasized the duty of Govt. to protect environment and has further stated that Government should, in the absence of compelling reasons, keep in view the international obligations while exercising its discretionary powers under Forest (Conservation) Act. The impugned order dated 9/4/2010 which does not refer to any compelling need and/or consideration of aforesaid aspects of the matter, thus is clearly arbitrary and illegal.

ACTS

- 1. Constitution of India.
- 2. Forest (Conservation) Act 1980

AUTHORITIES

Nil at this stage.

Advocate for the Petitioner

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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

DIST : SINDHUDURG

PUBLIC INTEREST LITIGATION NO. OF 2010
[CIVIL APPELLATE JURISDICTION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA]

Pramod Ravindra Dhuri

Age: 42 years, Occ: Agr. & Social work

R/at: Mangaon, Tal. Kudal,

Dist. Sindhudurg

Petitioner

Vs.

1. State of Maharashtra,
Through Principal Secretary
Department of Forest,
Mantralaya, Mumbai.

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2. Union of India
(Ministry of Environment and Forest)
Ayakar Bhavan, Near Churchgate
Station, Mumbai.

3. Naresh Adkuji Zurmure
Dy. Conservator of Forest,
Having place of work at:
Sawantwadi, Tal. Sawantwadi,
Dist. Sindhudurg

Respondents

TO THE HON'BLE CHIEF JUSTICE AND HIS
COMPANION JUDGES OF THE HIGH COURT OF
JUDICATURE AT MUMBAI

THE HUMBLE PETITION OF THE PETITIONER ABOVE
NAMED MOST RESPECTFULLY SHEWETH

1. The Petitioner is a citizen of India. The petitioner is Chairman Shikshan Prasarak Mandal, Zarap Panchkroshi Salgaon, a registered public trust which is running several educational institutions including secondary school, Junior College and a Senior College. The petitioner is Chairman, Jaihind Gramonnati Sanstha, Salgaon, which is running several educational institutions for D.Ed. B.Ed. as well as several vocational courses in information technology and other disciplines. The petitioner, further is Chairman, Salgaon Gramin Bigar Sheti Sahakari Patsanstha Maryadit, Salgaon which has more than 1300 members and is providing financial assistance to local citizens whenever they need the same. The petitioner is active social worker and has raised various issues for educational and social upliftment of poor inhabitants of Sindhudurg. The respondents are authorities appointed by law and are entrusted with duties interalia to protect forest land under the provisions of Forest (Conservation) Act 1980 and rules framed thereunder.

2. The petitioner by present litigation has impugned the act of respondents in protecting illegal constructions erected by destroying reserved forest as well as guilty officers responsible for said illegality. The construction impugned interalia is an Eco Tourism Centre constructed by forest authorities in reserved forest at Dhamapur Village, Tal. Malvan, Dist. Sindhudurg by destroying reserved forest. During construction of said Eco Tourism Centre, various works such as construction

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of cement concrete structures like temple, children park, well, platforms for tents, restaurant, godown, administrative buildings, toilets, footpath, upgradation of cart track by asphaltting etc. was carried out, large tracts were cleared for parking and barbed wire fencing and electrification of area was carried out. The respondents permitted igniting fire in the forest and also permitted sale of firewood to cook food in the forest. Hereto annexed and marked Exh.'A' is the copy of photographs depicting said illegal constructions carried out by officers of forest department themselves in a 0.8 density reserved forest.

3. The petitioner submits that one Shri Narayan Laxman Rane had filed P.I.L. No. 2 of 2007 against impugned construction. The respondents appeared and stated that the said construction was carried out under order dated 27/5/2003 passed by respondent no.2, whereby working plan of Sawantwadi was approved. It was also contended that said construction was carried out in natural blank spaces and no trees were cut. The order dated 27/5/2003 clearly states that no forests bearing naturally grown trees shall be clear felled for any purpose whatsoever. Section 5 of Chapter IV of Working Plan approved by order dated 27/5/2003 further states that small huts will be constructed at strategic points and that no cement concrete structures will be erected in the forests. It therefore is obvious that impugned cement concrete construction, electrification and barbed wire fencing in a 0.8 density reserved forest was clearly contrary to working plan and was ex-facie illegal. Hereto annexed and marked Exh.'B' is the copy of said order dated 27/5/2003 as well as relevant extract of working plan approved by respondent no.2 for Sawantwadi.

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4. The petitioner submits that pursuant to orders passed by this Hon'ble Court in P.I.L. No. 2 of 2007, a committee of Collector Sindhudurg and Chief Conservator of Forests (PT & SP) Maharashtra State, Nagpur was formed which visited the area and submitted its report dated 16/1/2010 to Principal Secretary (Forests), Govt. of Maharashtra. The said report states that about 146 trees were cut in serious violation of forest laws and that J.C.B. machines were used to destroy virgin forest by authorities whose duty was to protect forest. The report also states about fixing responsibility on senior officers. The respondents, however, have not taken any action in the matter till date. The petitioner further submits that wood of said 146 trees, also, appears to have been misappropriated and no efforts are made to trace the same and/or to recover the price thereof. Hereto annexed and marked Exh.'C' is the copy of report dated 16/1/2010 submitted by committee of Collector Sindhudurg and Chief Conservator of Forests (PT & SP) Maharashtra State, Nagpur to Principal Secretary (Forests), Govt. of Maharashtra.

5. The petitioner submits that the respondent no.1 also applied to respondent no.2 for post facto sanction to impugned construction. The respondent no.2, in gross violation of the guidelines given by apex court, by its order dated 9/4/2010 granted post facto sanction to the diversion of 1.25 hectares of reserved forest land for non forest purpose. This Hon'ble Court in the circumstances by its order dated 21/4/2010 disposed of P.I.L. No. 2 of 2007 but granted liberty to challenge the order dated 9/4/2010 passed by respondent no.2. The petitioner in said P.I.L. No. 2 of 2007 has not filed any petition till date

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challenging the order dated 9/4/2010 passed by respondent no.2. The petitioner submits that issue is of great importance and involves destruction of forest by officers who were dutybound to protect the same. Hereto annexed and marked Exh.'D' is the copy of impugned order dated 9/4/2010 passed by respondent no.2 granting post facto sanction to the diversion of 1.25 hectares of reserved forest land for non forest purpose, as well as order dated 21/4/2010 passed by this Hon'ble Court in P.I.L. No. 2 of 2007.

6. The petitioner submits that he being aggrieved by impugned order dated 9/4/2010 passed by respondent no.2, has filed present Public Interest Litigation praying to quash and set aside said order dated 9/4/2010 passed by respondent no.2, to direct the respondents to restore reserved forest illegally converted to non forest use by afforestation and for stern action against erring officials.

7. The petitioner submits that respondents i.e. Union Government as well as State Government are bent upon protecting illegal Eco Tourism Centre as well as guilty officers even in defiance of successive orders passed by Apex Court as well as this Hon'ble Court. The impugned order of approval dated 9/4/2010 does not give any reason as to why said illegal cement concrete construction in a 0.8 density reserved forest was deemed fit for regularization and so also the impugned approval does not make any reference even to opinion given by Advisory Committee constituted under section 3 of Forest (Conservation) Act 1980. The impugned order smacks of unholy haste and is totally non speaking. The petitioner

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therefore submits that concerned authority was more interested in protecting illegal construction and guilty officers rather than protecting fragile environment of the area. The concerned authority has totally ignored that principle of sustained development and has committed gross illegality in attempting to legalize as ex facie illegal cement concrete construction in a 0.8 density reserved forest.

8. The petitioner submits that impugned permission given by respondent no.2, talks about fixing NPV of diverted forest land and recovering the cost from the agency. In present case forest is not destroyed for any commercial activity by some other person, but by forest department itself just to suit whim of some officer. In the circumstances it is not clear who will bear the cost, concerned guilty officers, or forest department will pay cost to itself. Apex Court in a series of judgments has reiterated the principle of sustainable development and has clarified that Forest Policy 1998 has statutory flavour. Apex Court further in various judgments viz. case of T.N.Godavarman vs. Union of India dated 30/10/2002 reported in (2002)10 SCC page 606 has emphasized the duty of Govt. to protect environment and has further stated that Government should, in the absence of compelling reasons, keep in view the international obligations while exercising its discretionary powers under Forest (Conservation) Act. The impugned order dated 9/4/2010 which does not refer to any compelling need and/or consideration of aforesaid aspects of the matter, thus is clearly arbitrary and illegal.

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9. The petitioner submits that Apex Court in the case of A. Chowgule And Company Ltd. vs. Goa Foundation And others reported in (2008) 12 SCC Page 646 has considered the contention of legalization of illegalities by grant of post facto approval. Apex Court rejected the contention and held to effect that Forest (Conservation) Rules 1981 required prior approval and approval granted subsequently could not cure the illegality. The petitioner submits that this ought to have been considered by concerned authority while granting post facto approval. The petitioner submits that relevant Form A prescribed under provisions Forest (Conservation) Act 1980 and Rule 6 framed thereunder, provides for details of guilty officials as well as action taken against them and also requires whether illegal work is in progress on the date of application. The petitioner submits that till date no action is taken against guilty officers. The petitioner submits that impugned approval granted in violation of procedure given in the Forest (Conservation) Act 1980 and Rules framed thereunder, ignoring Forest Policy, ignoring directions given by Apex Court and ignoring directions given by this Court in present matter, in clearly contemptuous, arbitrary and illegal.

10. The petitioner submits that respondent no. 3 is a High Ranking officer who is in charge of area where impugned construction has been carried out. The respondent no. 3 is well aware of orders passed by this Hon'ble Court as well as Apex Court from time to time for protection of forests. The respondent no.3 is well aware that contention of impugned construction being in accordance with Working Plan was found incorrect by this Hon'ble Court and directions to take remedial

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measures were issued. The respondent no.3, still, repeated said incorrect submission on affidavit and on said basis obtained impugned order dated 9/4/2010. The petitioner submits that in any case Apex Court in the case of T.N. Godavarman vs. Union of India dated 12/12/1996 reported in (1997) 2 SCC 267 had directed to stop forthwith all on going activity within any forest in any state throughout the country, without prior permission of Central Govt. The respondent no. 3 can't be assumed to be unaware of said directions. It is also noteworthy that respondent no.3, even subsequently issued orders dated 11/3/2008 and 19/3/2008 thereby permitting user agencies to upgrade the cart track in reserved forest area by asphaltting to width more than 7 metres in gross violation of provisions of Forest (Conservation) Act 1980. The respondent no.3 did not even apply for any permission to Central Govt. at relevant time under provisions of the Act. The respondent no. 3, thus, instead of preventing private persons from destroying the forest, himself indulged in said illegality and then misled the court by filing false affidavit. The petitioner submits that this grave misconduct calls for strict action. Hereto annexed and marked Exh.'E' is the copy of orders dated 11/3/2008 and 19/3/2008 issued by respondent no.3 along with photograph showing destruction of forest in grave violation of legal provisions.

11. The petitioner submits that even otherwise the work of construction of impugned Eco Tourism Centre is done without inviting tenders and/or following due procedure. The petitioner submits that huge cash payments are made and it appears that amounts are misappropriated. The petitioner submits that concerned authorities, who were aware of the impugned

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construction being illegal and violative of law as well as orders of apex court and this Hon'ble Court, ought not to have spent public money on said construction. The petitioner therefore submits that mere expenditure of public money can't be the reason to regularize impugned construction. The petitioner submits that impugned construction should be directed to be demolished and cost of construction as well as demolition should be recovered from guilty officers.

12. The petitioner submits that it is settled principle that action against wrong doers is necessary if rule of law is to be established. In present case report dated 16/1/2010 submitted by Collector Sindhudurg and Chief Conservator of Forests (PT & SP) Maharashtra State, Nagpur to Principal Secretary (Forests), Govt. of Maharashtra makes it clear that about 146 trees were cut in serious violation of forest laws. The report also states about fixing responsibility on senior officers. The petitioner submits that the apex Court in the case of T.N. Godavarman vs. Union of India reported in 1998(2) SCC Page 59, has issued directions for initiation of disciplinary/criminal proceedings against officers found responsible for significant felling of trees. The Apex Court has issued similar directions in a number of other matters. The record shows that respondents are well aware of gross illegalities. The respondents, still have not even named the guilty officers let alone taking action against them. The respondents, still by not taking any action, have made it clear that their intention is not to take any real action but to protect wrongdoers by making a show of action being taken.

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13. No other alternate, adequate and equally efficacious remedy is available to the petitioner and the reliefs claimed herein if granted would be complete.

14. No other application is filed in this Hon'ble Court or in the Hon'ble Supreme Court with respect to the subject matter of this petition.

15. The Petitioner has not received notice of any caveat filed in above matter.

16. The petitioner submits that impugned order is dt. 9/4/2010. The petitioner in any case submits that the cause of action in present matter is in continuation as violation of provisions of Forest Laws is continuing. The petitioner in the circumstances, has filed present petition expeditiously and without any delay or latches.

17. The petitioner, submits that if officers dutybound to protect the forests are permitted to destroy them, ignoring the legal provisions as well as orders passed by apex court and this Hon'ble court, rule of law will lose meaning. The petitioner submits that it therefore is necessary that remedial action is taken and wrongdoers are punished. The petitioner submits that financial implications can't be permitted to come in the way of remedial action and position of wrongdoer can't be permitted to affect the action required to be taken against him. The petitioner therefore submits that he will suffer grave and irreparable loss if the reliefs as prayed are not granted where as no prejudice will be caused to the respondents. It is therefore necessary and in

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the interest of justice that the reliefs as prayed for in present public interest litigation are granted.

18. The petitioners therefore pray

a. for a writ of certiorari, for a writ in the nature of certiorari or for any other appropriate writ, direction or order calling for the records and proceedings of impugned order dt. 9/4/2010 passed by respondent no.2 annexed to present petition as Exh.'D' and after examining the legality, validity and propriety thereof, impugned order dt. 9/4/2010 passed by respondent no.2 annexed to present petition as Exh.'D' be quashed and set aside and request for grant of post facto sanction to impugned construction be rejected.

b. for a writ of mandamus, for a writ in the nature of mandamus or for any other appropriate writ, direction or order directing the respondents no. 1 and 2 to demolish impugned Eco Tourism Centre, constructed at Dhampaur Tal Malwan Dist. Sindhudurg and restore the forest to original status.

c. for a writ of mandamus, for a writ in the nature of mandamus or for any other appropriate writ, direction or order directing the respondents no. 1 and 2 to institute inquiry by Anti Corruption Bureau in irregularities in construction of impugned Eco Tourism Centre and to take appropriate penal action against guilty officials and to recover cost of construction of said illegal Eco

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Tourism Centre as well as wood misappropriated from the guilty officers.

d. pending the hearing and final disposal of this Public Interest Litigation

(i) the execution, implementation and operation of impugned order dt. 9/4/2010 passed by respondent no.2 annexed to present petition as Exh.'D' be stayed.

(ii) the respondents no. 1 and 2 be directed to demolish impugned Eco Tourism Centre, constructed at Dhampaur Tal Malwan Dist. Sindhudurg and restore the forest to original status.

(iii) the respondents no. 1 and 2 be directed to institute inquiry by Anti Corruption Bureau in irregularities in construction of impugned Eco Tourism Centre and further take appropriate penal action against guilty officials and to recover cost of construction of said illegal Eco Tourism Centre from the guilty officers.

e. ad-interim relief in terms of prayer (d) may be granted.

f. for costs.

g. for such further and other reliefs as the nature and circumstances of the case may require.

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AND FOR WHICH ACT OF KINDNESS AND JUSTICE THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

High Court, Mumbai

Date 28/4/2010

Advocate for the petitioner

VERIFICATION

I, Pramod Ravindra Dhuri , the petitioner above named do hereby solemnly affirm and declare that what is stated in para no. 1 to 5 is true to my own knowledge and what is stated in para no. 6 to 17 are legal submissions, which I believe to be true and that stated in para no. 18 are the consequential reliefs claimed in this petition.

Solemnly affirmed at ^{Sinhadurg} ~~Mumbai~~

Date 26/4/2010

^{Sd/-}
Deponent

Identified by me

Before me

^{Sd/-}
Advocate



W



'Annexure - R2'

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pil-97.10, cai13.15

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.97 OF 2010

Shri Pramod Ravindra Dhuri ... Petitioner
Vs.
The State of Maharashtra and Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.13 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.97 OF 2010**

The State of Maharashtra ... Applicant
Vs.
Shri Pramod Ravindra Dhuri and Ors. ... Respondents

Mr. N.R. Bubna, for the Petitioner in PIL No.97 of 2010 and for Respondent No.1 in CAI No.13 of 2015.

Mr. V.S. Gokhale, AGP, for the Respondent No.1 in PIL No.97 of 2010 and for Applicant in CAI No.13 of 2015.

Dr. Sadhana Mahashabde a/w Mr. Jaydeep S. Deo, for Respondent No.2.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 3rd FEBRUARY, 2015

P.C.

We have perused the affidavit of Shri S. Ramesh Kumar, the Deputy Conservator of Forests, Sawantwadi, District Sindhudurg. A copy of the Stage-II approval dated 12th January, 2015 granted by the Union of India is annexed to the said affidavit. The learned AGP submits that by extending the time granted under the earlier order to

procure Stage-II approval, the order dated 17th December, 2014 may be recalled.

2. However, we find that there are several conditions incorporated in the Stage-II approval. There is a specific condition of compensatory afforestation in Clause 2(a). Clause 16 deals with tree felling during the construction. Clause 16 reads thus : -

“16. If the Hon'ble High Court reaches to the conclusion that any tree felling has taken place during construction, then ten times the number of trees felled, as decided by the Hon'ble High Court, will be planted at the cost of Forest Department, Maharashtra to compensate the loss of trees on this account.”

3. Unless the State satisfies the Court that compliance is made with all the terms and conditions incorporated in Stage-II approval dated 12th January, 2015, the order dated 17th December, 2014 cannot be recalled.

4. In the context of Condition No.16, to which we have made reference above, the learned counsel appearing for the Petitioner invited our attention to the report dated 16th January, 2010 jointly submitted by the Collector of Sindhudurg and the Chief Conservator of Forests, Maharashtra State. The report records that the probable

number of trees removed or cut for the project is 146. There is no reason to disbelieve what is stated by the higher officer of the Forest Department and the District Collector. Therefore, in terms of Condition No.16, compliance will have to be made by the State by planting total 1460 trees. It is obvious that while selecting the trees for re-plantation, an endeavour shall be made to plant the trees of the same type which were cut, the details of which have been provided in the said report dated 16th January, 2010.

5. We direct the State Government to file a compliance affidavit of all the conditions incorporated in Stage-II approval within a period of two months from today. Place the Petition on 7th April, 2015 under the caption of "Directions". Affidavit on above terms shall be filed by the concerned Officers of the Forest Department on or before 1st April, 2015. We direct that till the next date, the order of this Court dated 17th December, 2014 directing demolition of the Eco-Tourism Center and restoration of the Forest to its original condition shall not be implemented.

(A.K. MENON, J)

(A.S.OKA, J)

Case Details

Bench :- Bombay**CNR No. :-** HCBM010171602010**Stamp No. :-** PILST/11622/2010**Filing Date :-** 29/04/2010**Reg. No. :-** PIL/97/2010**Reg. Date :-** 05/05/2010**Petitioner :-** PRAMOD RAVINDRA DHURI - v**Respondent :-** STATE OF MAHARASHTRA AND ORS. - v**Petn.Adv. :-** SHRI. N. R. BUBNA v**Resp.Adv. :-** GOVERNMENT PLEADER FOR R. NO. 1 v**District :-** SINDHUDURGA **Bench :-** DIVISION**Status :-** Admitted(Unready)**Last Date :-** 16/03/2016 **Stage :-** PIL FOR ORDERS**Last Coram :-** HON'BLE SHRI JUSTICE NARESH H. PATIL

HON'BLE SHRI JUSTICE A.A. SAYED

Act :- Indian Forest Act

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