

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL WESTERN ZONE, BENCH PUNE

ORIGINAL APPLICATION NO. 37/2023 (WZ)

IN THE MATTER OF:

Sushant Subhash More ----- Applicant

Versus

M/s. Hotel Sahyadri Puspa
and others ----- Respondents

<u>Index</u>		
Sr. no.	Particulars	Page no.
1.	Affidavit on behalf of Respondent No. 104, Deputy Conservator of Forest, Satara Division.	

Filed by:



Preshit Surshe,
(Advocate for Respondent no.104)

**BEFORE THE HON'BLE NATIONAL GREEN
TRIBUNAL WESTERN ZONE, BENCH PUNE**

ORIGINAL APPLICATION NO. 37/2023 (WZ)

IN THE MATTER OF:

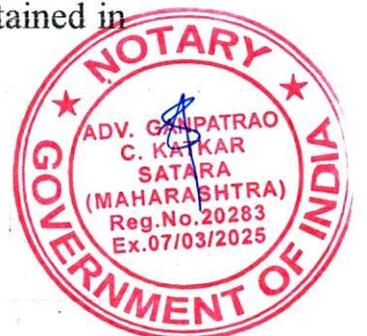
Sushant Subhash More ----- Applicant
Versus
M/s. Hotel Sahyadri Puspa
and others ----- Respondents

**AFFIDAVIT-IN-REPLY ON BEHALF OF THE
RESPONDENT NO. 104:**

**I, Mahesh Suresh Zanjurne, Age - 35 years, working as
Assistant Conservator of Forests (Afforestation), Satara Forest
Division, Satara state on solemn affirmation as under :-**

1. I say and state that I have been authorized to file this Affidavit-in-reply on behalf of the Respondent No. 104 - the Deputy Conservator of Forests, Satara.
2. I say and state that I have carefully read the contents of the Original Application (OA for short) and documents produced along with it and I have understood the same.
3. I say and state that I have best knowledge, belief and information derived from the records and files maintained in

(Signature)



the office of the Respondent No. 104 - the Deputy Conservator of Forests, Satara, the office of the Range Forest Officer at Satara and Medha with respect to facts involved in the present OA. On the basis of the said knowledge, belief and information I file this Affidavit-in-reply without suppressing any material fact from this Hon'ble Tribunal.

4. I say and state that the contents of the OA and the reliefs sought therein against the Respondent No. 104 are false and incorrect.
5. I say and state that the contents of OA, which are not specifically admitted by me, shall be deemed to have been denied by me.
6. I say and state that I crave leave of this Hon'ble Tribunal to amend or to add or to delete any of the averments hereinabove as and when, if found, necessary. I crave leave of this Hon'ble Tribunal to file additional Affidavit-in-reply, as and when, if required.

BACKGROUND FACTS :

(Signature)



7. I say and state that the hotels and farm houses alleged to have been constructed by the Respondent No. 1 to 100 or any other hotel or farm house have been constructed along the Yavateshwar to Kaas Road, and they are not or none of them is on any Reserved Forest, Protected Forest or any forest or the forest acquired under the Maharashtra Private Forest (Acquisition) Act, 1975. I say and state that Kaas Pathar situates at about 25 Kms. away from the city of Satara as averred in Para 2 under caption BRIEF FACTS OF THE CASE. Village Yavateshwar is situated at about 4 to 5 kms away from the city of Satara. From Village Yavateshwar - Bannoli there is a public road passing towards West. At about 25 Kms. away from the public road, Kaas Pathar is situated between West and South. Kaas Pathar situates at about 400 mtrs away from Yavateshwar - Bannoli Road. The public road leading from Yavateshwar passes to Village Bannoli situated on West. Kaas Pathar is on the Reserved Forest land. The hotels and farm houses referred to in Para 1 under caption BRIEF FACTS OF THE CASE in the OA are



situated on private lands situated on both sides of Yavateshwar - Bamnoli Road. The hotels and farm houses situated on both sides of Yavateshwar - Bamnoli Road are not close to the Kaas Pathar. The discharge, which is untreated effluent from the hotels and farm houses does not pass towards the Kaas Pathar or does not come on or nearby the Kaas Pathar, since the hotels and farm houses are at about 200 to 300 Mtrs. away from the border of the Kaas Pathar. While the hotels and farm houses on the private lands are on low level, the Kaas Pathar is located on higher level and thereby any discharge from the hotels and farm houses does not come nearby or on the Kaas Pathar. The discharge from the hotels and farm houses does not damage or pollute anything on and nearby the Kaas Pathar. Vehicles and people from Yavateshwar - Bamnoli Road do not trespass or damage any part of the Kaas Pathar. Hence, there is no legal cause for the Forest Department to take any legal action against any of the Respondent Nos. 1 to 100, who run their hotels and farm houses situated on private lands

[Handwritten signature]



situated on both sides of the Yavateshwar - Bannoli Public Road.

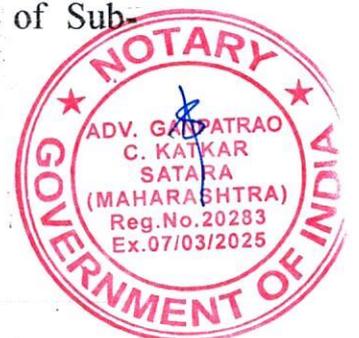
8. The Applicant has not produced any documents such as any Extract of Village Form No. 7/12, 8-A, any Notification proposing to be or declared as any land occupied by the hotels and farm houses referred to in the OA as Reserved Forest, Protected Forest or any forest or the forest acquired under the Maharashtra Private Forest (Acquisition) Act, 1975. Furthermore, I say and state that the Applicant did not issue any legal notice to the Forest Department alleging that the construction of hotels and farm houses are on any Reserved Forest, Protected Forest or any forest or the forest acquired under the Maharashtra Private Forest (Acquisition) Act, 1975.
9. The hotels and farm houses referred to in the OA are on private lands. Consequently, the provisions of the Forest (Conservation) Act, 1980, the Indian Forest Act, 1927 or any other law to be invoked by the Forest Department for taking action are not or is not attracted. I say and state that already



the Tahsildar, Satara and Sub-Divisional Officer, Satara both working under the Respondent No. 101 - Collector, Satara and Sub-Regional Officer, Maharashtra Pollution Control Board, Sub-Regional Officer, Satara issued the notices to the hotel owners and farm house owners, against whom the Applicant has prayed for reliefs. I say and state that the Applicant has produced those notices along with the OA.

10. I say and state that in view of above, the Applicant has failed to demonstrate with the evidence having probative value that a substantial question relating to environment (including enforcement of any legal right to environment), is involved arising out of the implementation of the enactments relating to the Forest Department and specified in Schedule - I referred to in Sub-section (1) of Section 14 of the National Green Tribunals Act, 2010, because of not taking any action by the Forest Department / the Respondent No. 104 - the Deputy Conservator of Forests, Satara.

11. I say and state that the Applicant is, therefore, not entitled to reliefs and compensation in view of provisions of Sub-



section (1) of Section 15 of the National Green Tribunals Act, 2010.

12. I say and state that on the backdrop of above facts of the present OA as against the Respondent No. 104 is not at all maintainable, this being devoid of any merit.

PARAWISE REPLY

13. Regarding contents of Paras I and II in the OA, I say and state that the contents being in respect of addresses of the Applicant and the Respondents, I admit the same as matter of record.
14. Regarding contents of Paras III in the OA, I say and state that I do not know whether the Applicant is an Environmental Activist. He should establish the same with reliable evidence.
15. Regarding contents of Paras IV in the OA, I say and state that I admit the location of Kaas Pathar or the Kas Plateau. I also admit that Kaas Pathar or the Kas Plateau is on the Reserved Forest land, but is at about 200 to 300 Mtrs. away from Yavateshwar - Bamnoli Public Road. I admit that Kas

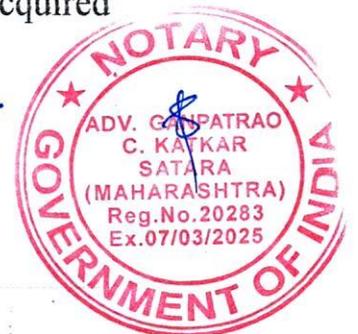
[Handwritten Signature]



Plateau became a part of UNESCO World Heritage Site in the year 2012. It is an extremely important Natural Heritage Site in India and the Government is taking significant steps to protect and conserve it.

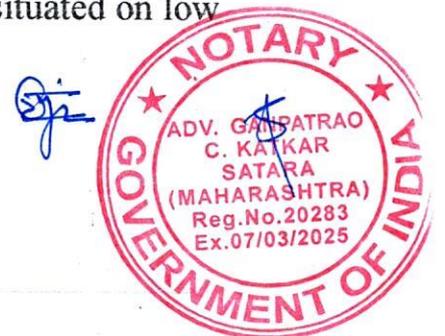
16. Regarding contents of Paras V in the OA, I say and state that I do not know whether a large number of farm houses and hotels have been illegally constructed on Yavateshwar - Kaas Road. In fact, there is Yavateshwar - Bamnoli Public Road and Kaas Pathar is situated at about 200 to 300 Mtrs. away from Yavateshwar - Bamnoli Public Road. The farm houses and hotels do not operate in the Eco-Sensitive Zone and they are not causing environmental damage to the Kaas Pathar.
17. Regarding contents of Paras VI in the OA, I say and state that there are several distinct plots, but I do not know whether each one has encroached upon. The Applicant has not specified where the alleged encroachments are located. None of the alleged encroachments took place on Reserved Forest, Protected Forest or any forest or the forest acquired

[Handwritten Signature]



under the Maharashtra Private Forest (Acquisition) Act, 1975.

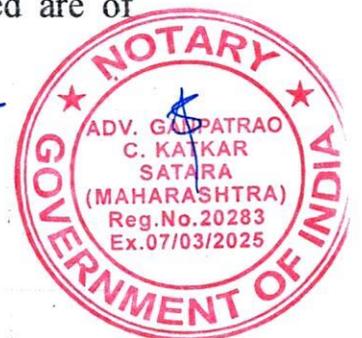
18. Regarding contents of Paras VII in the OA, I say and state that there is no damage caused to any forest on Kaas Pathar and hence there is no question of taking any action against any of them. Therefore, there is no legal cause of action for making the OA against the Forest Department / Respondent No. 104 - the Deputy Conservator of Forests, Satara.
19. Regarding contents of Para 1 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that I do not know thereabout, except the contents reading, "That the illegally constructed hotels and farm houses by the Respondent Nos. 1 to 100 along Yavateshwar to Bamnoli Road cause continuous pollution thereby jeopardizing the vary ecology of Kas Plateau." As has been stated hereinabove Kas Plateau or Kaas Pathar is located at about 200 to 300 Mtrs. away from Yavateshwar - Bamnoli Public Road and none of the constructions is close to or nearby the Kas Plateau or Kaas Pathar. The hotels and farm houses are situated on low



level of lands than the Kaas Pathar. The Kaas Pathar is on higher side than the lands on which the hotels and farm houses are situated.

20. Regarding contents of Para 2 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that I admit that Kas Plateau or Kaas Pathar situated on Reserved Forest land, is located at about 25 Kms. away from the city of Satara. It is a biodiversity hotspot and is approximately 10 Sq. Kms. in area. Kaas Pathar has been declared as World Natural Heritage Site by the UNESCO in the year 2012.
21. Regarding contents of Para 3 and 4 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that I admit the contents therein.
22. Regarding contents of Para 5 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that there are many hotels and farm houses on Yavateshwar - Bamnoli Public Road, but I do not know whether they are 100 in numbers and have been illegally constructed. Because the land on which the hotels and farm houses situated are of

[Handwritten signature]



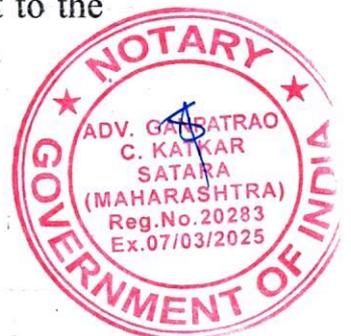
non-forest land and none of the lands is either Reserved Forest, Protected Forest or any forest or the forest acquired under the Maharashtra Private Forest (Acquisition) Act, 1975. It is not the function / duty of the Forest Department to see whether the constructions on non-forest lands are legal or illegal. There are some villages on Yavateshwar - Bannoli Public Road and upto Kaas Pathar, there are Gram Panchayats working in those villages. It is the function / duty of those Gram Panchayats under the Maharashtra Village Panchayats Act, 1959 to grant construction permission and to take action against illegal constructions. I do not know whether those establishments are constantly engaging in acts that are polluting the environment. Since those establishments are not on any Reserved Forest, Protected Forest or any forest or the forest acquired under the Maharashtra Private Forest (Acquisition) Act, 1975, the Forest Department cannot take any action against them, more particularly when the discharging untreated effluents outside their premises, according to the Applicant, they are



emitting harmful air pollutions directly into the environment and are illegally extracting the ground water for commercial use. Because none of the acts amounts to trespass, causes any damage to the Reserved Forest situated at Kaas Pathar.

23. Regarding contents of Para 6 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that I do not know about the contents therein. The letter dated 03/10/2022 at **Annexure - B** in OA was neither addressed to the Forest Department, nor was copy thereof sent to the Forest Department. This is explicit from the letter dated 03/10/2022 at **Annexure - B** in OA.
24. Regarding contents of Paras 7 to 24 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that I do not know anything about the contents therein, since the contents are not with respect to the Forest Department. None of the notices dated 13/10/2022 and 19/10/2022 at **Annexure - C** in OA, dated 22/10/2022 at **Annexure - D** in OA, final notices issued in the year 2022 at **Annexure - E** in OA was either addressed to or copy thereof was sent to the

[Handwritten signature]



Forest Department. The guidelines dated 24/09/2020 at **Annexure - I** in OA are not concerning the Forest Department. In **Western Green Farm Society Vs. Union of India and others** before the Principal Bench of this Hon'ble Tribunal no direction was issued to the Forest Department.

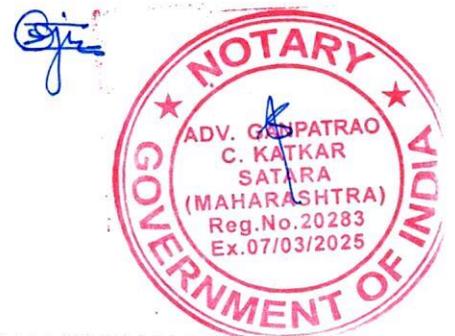
25. Regarding contents of Para 25 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that no discharge untreated effluent comes nearby or passes over the Kaas Pathar or Kas Plateau, since the hotels and farm houses situate on low level of lands are quite away from the Kaas Pathar.
26. As regard contents of Para 26 under caption BRIEF FACTS OF THE CASE in the OA, I say and state that the contents are in respect of the fundamental right guaranteed by Article 21 of the Constitution of India. Nothing against the Forest Department has been averred in Para 26 of the OA.
27. Regarding contents of GROUND - I in the OA, I say and state that I deny the averments therein. Because there is no

[Handwritten Signature]

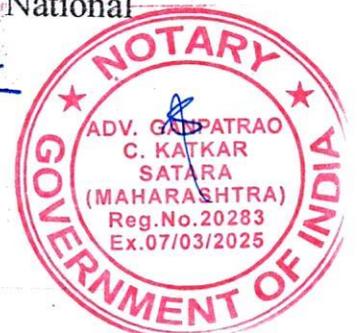


issue whatsoever with respect to environment and pollution on the Kaas Pathar as has been clarified hereinabove.

28. Regarding contents of GROUND - II in the OA, I say and state that as has been clarified hereinabove, there was nothing happened where a substantial question relating to environment (including enforcement of any legal right to environment) is involved and for grant of relief and compensation to the victims of alleged pollution and other environmental damage under the enactments specified in Schedule - I, but relating to the Forest Department, for restitution of property damage and of the environment as no such incident has occurred so as to take legal action by the Forest Department. Hence, the Applicant cannot invoke the provisions of Section 14 and 15 of the National Green Tribunals Act, 2010 against the Forest Department.
29. Regarding contents of GROUND - III to VII in the OA, I say and state that none of the contents is against the Forest Department.

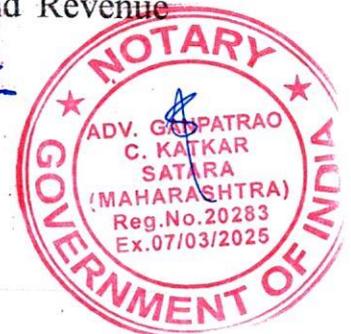


30. Regarding contents of GROUND - VIII in the OA, I say and state that the Forest Department did not violate provisions of Sections 19 and 21 of the Water (Prevention and Control of Pollution) Act, 1974, Section 19 of the AIR (Prevention and Control of Pollution) Act, 1981 and Section 13 (2) and Section 13 (8) of the Solid Waste Management Rules, 2016 as has been clarified hereinabove.
31. Regarding contents of GROUND - IX in the OA, I say and state that as has been clarified hereinabove, the Forest Department - Respondent No. 104 did not violate provisions of Article 21 of the Constitution of India. No damage to the Wildlife and Ecology on the Kaas Pathar on Reserved Forest land has been caused.
32. Regarding contents under caption LIMITATION in the OA, I say and state that the OA is not within the period of limitation, since the OA has not been made within a period of six months from the date on which the cause of action for such dispute first arose as against the Forest Department, vide Section 14 (3) and vide Section 15 (3) of the National



Green Tribunals Act, 2010. The hotels and farm houses have been constructed long before this OA was instituted. The Applicant did not apply for condonation of delay as required by proviso to Sub-section (3) of Section 14 and as required by proviso to Sub-section (3) of Section 15 of the National Green Tribunals Act, 2010. Because the alleged cause of action occurred long before six months of the institution of this OA. Hence, the OA is barred by the period of limitation as against the Respondent No. 104, who has been impleaded by the order dated 04.09.2023 passed by this Hon'ble Tribunal. This OA was instituted on 13.03.2023.

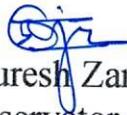
33. Regarding contents under caption PRAYERS in the OA, I say and state that none of the alleged illegal constructions is on Reserved Forest, Protected Forest or any forest or the forest acquired under the Maharashtra Private Forest (Acquisition) Act, 1975 so as to remove and demolish the same invoking the provisions of Section 26 (1-A) (Maharashtra Amendment) of the Indian Forest Act, 1927 and Section 53 and 54 of the Maharashtra Land Revenue



Code, 1966. None of the constructions, as has been clarified hereinabove causes damage to public health, property and environment. There is no pollution in any way on the Kaas Pathar by the hotels and the farm houses. Thus, the Applicant has no legal right to proceed against the Respondent No. 104 / Forest Department. I, therefore, pray to dismiss the OA as against the Respondent No. 104 / Forest Department with costs.

Pune.

Date : 05.07.2024


(Mahesh Suresh Zanjurne)
Assistant Conservator of Forests
(Afforestation), Satara and
authorized officer for the
Respondent No. 104



VERIFICATION

I, Mahesh Suresh Zanjurne, Age - 35, Occupation - Assistant Conservator of Forests (Afforestation), Satara and authorized officer for the Respondent No. 104 do hereby solemnly verify above contents of Para Nos. 1 to 33 of the Para wise Affidavit-in-reply as true and correct to the best of my knowledge, belief and information derived from the records and files maintained in the office and I verify the same to be true. I say that I have not suppressed any material fact from this Hon'ble Tribunal.

Solemnly affirmed at Satara.

Pune.

Date : 05.07.2024


(Mahesh Suresh Zanjurne)
Assistant Conservator of Forests
(Afforestation), Satara and
authorized officer for the
Respondent No. 104

