

BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE AT PUNE

Original Application No.72/2023 (WZ)

SWAPNESH SHERLEKAR
AND ORS

... APPLICANTS

V/s

STATE OF GOA AND ORS.

... RESPONDENTS

AFFIDAVIT-IN-REPLY ON BEHALF OF THE
RESPONDENT NO. 5

I, Shri Orville Clinton Vales, aged 39 years, son of
Late Shri Olavio Vales, Indian National, married, the
Secretary of the Respondent No. 05 Panchayat and

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having my office at the Respondent No. 05 Panchayat office at Sancoale, Mormugao, Goa do on solemn affirmation state as under:-

1. I say that the application under reply is not only not maintainable but is also barred by law of limitation based on the material on record.

2. I say that in the application under reply the Applicant has challenged the 3rd Part Final Report, Development Permission dated 29/11/2021 and Conversion Sanad dated 10/06/2009. I say that the Development Permission is granted to the Respondent no. 7 under the Town and Country Planning Act read with the Goa Building Regulation Act 2008 and Goa Building Regulations 2010. I say

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that both the aforementioned Acts are not Scheduled Acts under the NGT Act and similarly the Orders passed under the said Acts are not appealable under S.16 of the NGT Act. I say that likewise the Conversion Sanad dated 10/06/2009 is issued under S.32 of the Goa Land Revenue Code and is appealable under the provisions of the said Code.

3. I say that the Goa Land Revenue Code is not a scheduled act under the NGT Act and neither are the Orders passed under the said Act appealable under S.16 of the NGT Act. I say that consequently the prayer clauses (c) and (d) of the application under reply is not maintainable in terms of law. I say that the prayer clause (b) which relates to the Report of the Review Committee cannot be impugned/challenged under S.16 of the NGT Act and

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neither can the Report be set aside in terms of S.14 of the NGT Act which renders even the said prayer not maintainable. I say that similarly prayer clause (a) and (g) cannot be granted for the reason, that the same does not have the sanction of law. I say that the Indian Forest Act is also not a Scheduled Act under the NGT Act.

4. I say that in pursuance of the directions issued by this Hon'ble Tribunal from time to time, the Private Forests Review Committee has reviewed 1678 survey numbers out of 3349 survey numbers. I say that accordingly the review committee has finalized an area of 455.1081 Hectare as private forest area in 60 qualifying survey numbers, vide Notification dated 09/08/2023 published in the Official Gazette dated 10/08/2023, the Government of Goa has

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Notified the part final report on Private Forest encompassing an area of 455.1081 Hectare which has been reviewed and finalized in all respects by the Review Committees till its 6 (Six) Part Final Reports, as Private Forest in the State of Goa. I say that the question of raising a dispute to the 3rd Part Final Report and/or to the permissions granted in respect of the Subject Property does not arise.

5. I say that the development in respect of the subject property is complete and final NOC has been given by the MPDA and the Village Panchayat to Respondent no. 7. I say that despite the Applicants being aware, of the issuance of the Final NOC by the MPDA dated 21/10/2022 and the Final NOC issued by the Respondent No. 05 Panchayat dated 09/11/2022 in favour of the Respondent no. 7, the

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same have been disclosed and on the contrary suppressed by the Applicant.

6. I say that the entire issue raised by the Applicant is misconceived in facts and law.

7. I say that I deny that any part of the subject property is a private forest and/or that it is finally identified or demarcated as a private forest. I say that the conversion sanad proceeds on the footing that the subject property and the larger property bearing survey no. 194/1 is not a private forest in as much as the conversion sanad in Goa are based on the NOCs issued by the Forest Department. I say that in the present case, the NOC was issued by the Forest Department at the time of issuance of the Conversion Sanad which confirms that the larger survey no.

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Including the subject property does not attract the criteria of private forest.

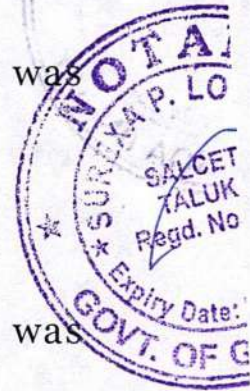
8. I say that the Letter dated 14/05/2009 issued by the Deputy Conservator of Forest is completely irrelevant for the purpose of the application under reply. I say that no part of the property under survey no. 194/1 qualifies as a private forest for the following reasons:-

- (a) 75% of the species on the property should be Forest species.
- (b) There should be a canopy density of 0.4%.
- (c) Minimum area should be of 5 Hectares

9. I say that the Letter dated 14/05/2009 does not opine on any of the above criteria and none of the above criteria were attracted in respect of Survey no.

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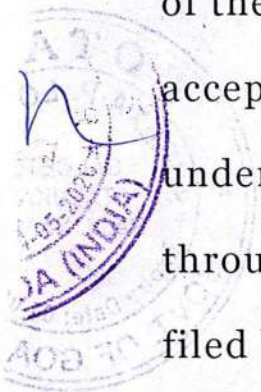
194/1 on account of which the conversion sanad was granted at the relevant time.



10. I say that the Letter dated 16/08/2016 was issued on the basis of the applicable law namely the Goa Tree Felling Act.

11. I say that I deny that the said property qualifies as a private forest. I say that I deny that there are dense forest species with dense tree canopy density and that the subject property is eco-sensitive in nature and that it is abundant in trees, plants and flora and fauna. I say that the South Goa Forest Division Committee Report was not final and was provisional. I say that there is no record of any inspection having been carried out by the South Goa Forest Division Committee and therefore, the report

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of the South Goa Forest Division Committee was not accepted by the Government and the Government undertook an identification demarcation exercise through the Review Committee and reports were filed before the Hon'ble NGT.

12. I say that the 3rd Part Final Report clearly identified that the subject property and the larger property bearing survey no. 194 does not qualify as a private forest. I say that in view of the non-acceptance of the South Goa Forest Division Committee Report (Araujo Committee) and the subsequent reports filed by the Committee, the provisional identification by Araujo Committee stands superceded and/or negated. I say that I deny that the Araujo Committee had identified property

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under survey no. 194/1 as a private forest and/or that there was any other survey done at loco.

13. I say that the Development Permission dated 29/11/2021 granted by the MPDA is in terms of the Town and Country Planning Act read with the Goa Building Regulation Act 2008 and Goa Building Regulations 2010. I say that I deny that the findings of the 3rd Interim Report are arbitrary and/or in excess of powers of the Review Committee.

14. I say that the identification and demarcation in respect of the subject property was concluded in the 3rd Part Final Report and the reference to the 4th Part Final Report is inconsequential. I say that the 4th Part Final Report does not refer or relate to the subject property.



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15. I say that I deny that the Forest Authorities have not applied their mind whilst conducting inspection and studying the subject property. I say that I deny that the permissions granted in respect of the subject property are illegal and in any case are an abuse of the process of law.

16. I say that the Applicants were always aware that the instant application would be barred by limitation and hence to bail out of the sticky situation have propped up documents to navigate smoothly through the impediment of limitation under the NGT Act. I say that I deny that the cause of action to file the present application arose on 12/09/2022 and/or that the same is still continuing.

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17. I say that ironically for the Applicants both the provisions of the Forest Conservation Act and the Wildlife Protection Act are not applicable in the instant case.

18. I say that Google Images lack legal sanction and in any case I do not admit the same.

19. I say for all the reasons aforesaid, the application under reply be dismissed.

20. I say the contents of the paragraphs above are based on record except the contents of paragraphs 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17 and 18 which are based on legal advice from the Advocate of the Respondent No. 05 Panchayat, Shri Zeller C. de Sousa, which I believe to be true.



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Solemnly affirmed at Margao, Goa this 06th day of
February 2024



Orville
Deponent
SECRETARY
Village Panchayat
Sencolate - Goa.

Identified by me,

(Shri Zeller C. de Sousa)

Advocate

Solemnly affirmed before me by
Mr. Orville Clinton Vales

who is identified by
Adv Zeller C. de Sousa

to whom I personally know

Reg. No. 1591/2023

Date: 06/02/2023

Surexa P. Lotlecar
SUREXA P. LOTLECAR
NOTARY MARGAO
SALCETE TALUKA
STATE OF GOA (INDIA)

