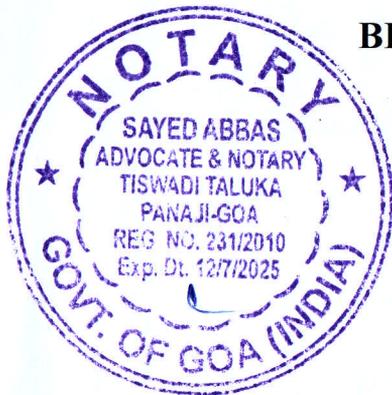


**BEFORE THE NATIONAL GREEN TRIBUNAL –
WESTERN ZONE BENCH PUNE AT PUNE**



I. A. No. 45/ 2024 WZ
in O. A. No. 72/ 2023 (WZ)

Swapnesh Sherlekar and Ors. ...Applicants.

Vs.

State of Goa and Ors. ...Respondents.

AFFIDAVIT-IN-REPLY BY RESPONDENT NO. 9
(CHAIRMAN – REVIEW COMMITTEE-2 / CHIEF
CONSERVATOR OF FORESTS)

I, Mr. Praveen Kumar Raghav, the Chairman; Review Committee II, Age: Adult, Occupation: Service, working as the Chief Conservator of Forest, the Respondent No. 9 having my office at : Forest Department, Government of Goa, Van Bhawan, Altinho, Panaji-Goa; do hereby beg to state on solemn affirmation as under:

1. I say and submit that the Application filed by the Applicant is false and frivolous and the same deserves to be dismissed on the ground mentioned hereunder. The Applicant is trying to mislead this Hon'ble Court by submitting misleading facts and details. I say and submit that the present Respondent i.e. the Review Committee has been constituted for reviewing the work done by the Thomas & Araujo Committees under prescribed terms of reference i.e. to review provisionally identified survey numbers by Thomas & Araujo Committee (hereinafter T&A).
2. The present Reply Affidavit is filed by Respondent No. 9 viz. Chairman, Review Committee-II/ Chief Conservator of Forest of Goa Forest Department under directions of Hon'ble NGT (WZ) in its order dated 08/05/2024 in the



captioned matter. The Hon'ble NGT in the order dated 08/05/2024 stated that:

"we find it necessary to confirm from respondent No.9 – Chief Conservator of Forests (Chairman of the Review Committee on Private Forests) as to whether ground truthing was done, because nothing could be shown by the learned counsel for the applicants that ground truthing was done and the survey number in question (Survey No.194) was excluded in violation of our directions, referred to above. Therefore, we direct the Registry to send a letter within seven days from the date of uploading of this order, to respondent No.9 – the Chief Conservator of Forests (Chairman of the Review Committee on Private Forests), Forest Department, Government of Goa, Altinho, Panaji-Goa directing him to appear personally before us or through VC on the next date and to file reply-affidavit, which is essential



before we consider the present amendment application (I.A. No.45/2024).”

3. It is submitted that the above directions are consequent to the I. A. No. 45/ 2024, in which the Hon’ble Tribunal observed that *“it is being argued that this survey number has been excluded from the category of private forest without complying with the directions of this Tribunal, which are cited by us above i.e. physical verification and ground truthing of the area. Hence, the third interim report is being prayed to be quashed by way of bringing an amendment, which is yet to be decided by us.”*

The present Respondent is not responding to the IA mentioned above and reserves its right to do the same.



Mr

4. It is submitted that the present Respondent denies the allegation of the applicant that the present Respondent was completely arbitrary, unscientific and violative of the directions issued by the Hon'ble Tribunal.

5. I say and submit that the chronology of events and the working of the Review Committee will clarify the ambiguity created by the Applicant. The Applicant is trying his level best to mislead the Hon'ble Tribunal by not submitting the complete facts and how the Committee has worked as per the terms. It is further submitted that the State Government had constituted the Review Committee - II (hereinafter RC-II) for review of work done by the Thomas & Araujo Committees under prescribed terms of reference to review approximately 32 sq. km. provisionally identified survey numbers by T&A



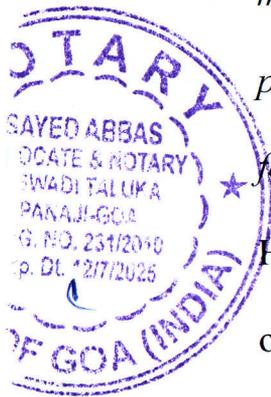
Committee. Accordingly, the Respondent is under process of reviewing all survey numbers in approximately 32 sq. km. which includes 8.64 sq. km. area finalized by T&A Committee as well, as the same was based on ocular estimation, thus arbitrary and unscientific.

6. Subsequently, Goa Foundation filed an O.A. No. 63/ 2022 (currently M.A. No. 03/ 2023) before the Hon'ble Tribunal challenging the review work with the contention that RC-II has gone beyond the scope of review by violating ToR which was to review only 23.36 sq.km. out of 32 sq. km. by leaving aside 8.64 sq. km. which were already finalized by T&A Committees.

7. The Hon'ble Tribunal, in para 89 of its order dated 12/09/2023 passed in M.A. No. 03/ 2023 observed that "*the methodology adopted by RC-II is*



scientific one and the demarcation of the private forest area done/ being done by it is found to be appropriate.” It further directed that “the areas which were finally identified as private forest area by the Thomas and Araujo Committees, if any area out of that is required to be excluded as per review being made by RC-II, the said area should be got verified physically with respect to all three criteria laid down for determination of the private forest”. Further, the Hon’ble Tribunal has acknowledged in para 77 of its order dated 12/09/2023 that “RC-II has not exceeded its mandate by undertaking review of the forest areas finalized by Thomas and Araujo Committees.” Thus this Hon’ble Tribunal made rightful observations and approved/ authenticated the scope and working of the present Respondent.

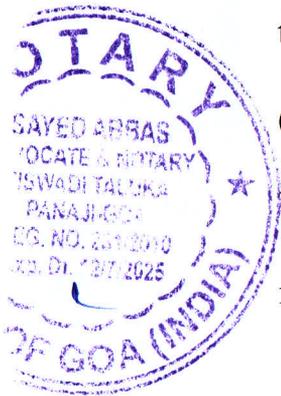


8. I say and submit that the work completed by this Respondent prior to the Order dt. 12.09.2023 of this Hon'ble Tribunal is a relevant factor in the present case. In the present context of the case, the total number of survey numbers comprising in the 8.64 sq. km. are 550 and the Respondent had already carried out the review of 281 survey numbers till the issue of the 12/09/2023 order by the Hon'ble Tribunal. Out of these 281 survey numbers, 9 survey numbers were already included and notified as private forest by RC-I (Sharma Committee) and 1 survey number was included as private forest by RC-II. 271 survey numbers were excluded for not qualifying all three criteria of private forests and were published in the six reports of the present Respondent. The survey no. 194/1 figures in the list of these already excluded 271 survey numbers. It was



excluded in third part final report of RC-II which was published on 13/09/2021.

9. After the order dated 12/09/2023 of the Hon'ble Tribunal, the RC-II sought the directions of the State Government and the legal advice of the Ld. Advocate General (**Annexure R-I**) with respect to the following points:



(i) whether all the 550 survey numbers finalized by the Thomas & Araujo Committee needs to be reviewed retrospectively in light of the Order dated 12/09/2023, or

(ii) whether only the remaining 269 survey numbers out of the total 550 survey numbers yet to be reviewed, are to be examined by RC-II by subjecting them to field verification for all three criteria prospectively.

10. Subsequently, the Government issued directions in this matter (**Annexure R-II**) on 07/12/2023 that *“the question of revisiting 281 survey numbers by carrying out physical inspection which survey numbers were subject matter of the six part final Reports do not arise and the physical inspection contemplated in the Order is only in respect of the remaining 269 survey numbers which were finally identified by the Thomas or Araujo Committee. There is no ambiguity in the Order. The Department may take opinion of Ld. A. G. also.”*



11. Pursuant to the above-mentioned direction the present Respondent sought the legal opinion of the Ld. Advocate General. The learned Advocate General in his legal opinion dated 15/01/2024 (**Annexure R-III**) opined that:

“Para 6. Since the 6-part interim reports submitted by the RC-II, which have reviewed 281 survey numbers out of the 550 survey numbers, which were identified as private forest by the T & A Committee, is accepted by the Hon’ble NGT, the direction of the NGT in para 91 will relate only to the remaining 269 survey numbers.

Para 7. The exercise as directed to be undertaken in para 91 of the Order, would have to be carried out in respect of those survey numbers which were identified as private forest by the T&A Committee and which do not yet form part of the interim reports submitted by the RC-II.”



12. In light of the above background, the Respondent No. 9 submits that as per the State Government and Learned Advocate General Legal opinion, the Respondent has reviewed remaining 269

Sy Nos. out of 550 finalized Sy Nos. as per the directions given by the Hon'ble NGT in its 12/09/2023 Order. The Review Committee did not touch those Survey Nos. which had already been reviewed before the Hon'ble NGT (Ref.: order dated 12/09/2023), and notified. Even the same had been notified in the year 2022 & 2023. These notifications have been well acknowledged by the Hon'ble NGT in its Judgments dated 12/09/2023 in M.A. no. 03/ 2022.

13. It is further submitted that as Survey Number 194 of Sancoale was one of those survey numbers which had already been reviewed & notified, so keeping in view the spirit of the Order dt. 12/09/2023 of this Hon'ble Tribunal, the direction of State Government and the Legal Opinion of the Learned Advocate General, the Survey Number in question along with 280 other such Survey Nos. were not touched again



by the present Respondent. Remaining 269 Survey Nos. were reviewed & published vide 7th part find report after Government approval.

14. It is submitted that before the order dated 12/09/2023 of the Hon'ble Tribunal, the RC-II had already carried out the review of survey no. 194 and published the same at Sr. No. 58 in its 3rd report dated 13 September, 2021(Annexure IV of 3rd Report) in which it is found not to qualify for all three criteria and hence excluded from list of private forest. **(Annexure RVI)**



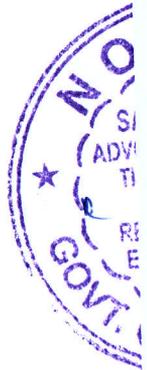
15. It is submitted that on the basis of the direction of the Government and legal Opinion of the Ld. Advocate General, this area has not been re-examined/ re-visited. In the 7th Report, in Annexure A2 , it is mentioned at Sr. No. 91 as list of survey numbers already reviewed and found not to qualify to

private forest criteria by RC-II and published in Interim Report III on 13/09/2021.

(Annexure RIV)

16.It is further submitted that the methodology adopted by the present Respondent is technically sound which has been appreciated by this Hon'ble Tribunal as well. It is not true to state that the Thomas and Araujo Committee reports were based on actual demarcation and survey. The Thomas & Araujo Committee has compiled the list only on the basis of ocular estimation. The procedure for review adopted by RC-II has been acknowledged by the Hon'ble Tribunal as scientific and thus the areas identified by T&A Committees were reviewed by RC-II.

17. I say and submit that the criteria adopted by Thomas & Araujo Committees were found to be



deficient. The Hon'ble Tribunal, in para 89 of its order dated 12/09/2023 in M.A. No. 03/ 2023, observed that *"the methodology adopted by RC-II is scientific one and the demarcation of the private forest area done/ being done by it is found to be appropriate."* It further directed that *"the areas which were finally identified as private forest area by the Thomas and Araujo Committees, if any area out of that is required to be excluded as per review being made by RC-II, the said area should be got verified physically with respect to all three criteria laid down for determination of the private forest"*. Further, the Hon'ble Tribunal in para 77 of aforesaid order dated 12/09/2023 has also acknowledged that *"RC-II has not exceeded its mandate by undertaking review of the forest areas finalized by Thomas and Araujo Committees."*



18. It is further submitted that the Applicant has by way of misrepresenting the information has tried to mislead the Hon'ble Tribunal by stating that "*the Review Committee in the 7th Report has arbitrarily reviewed 272 survey numbers out of the 550 survey numbers identified and finalized by the Thomas and Araujo Committee, which includes the said property i.e. survey number 194/1 of village Sancoale, which is under consideration in the present application, and has excluded the same from the list of finally identified private forests, without conducting physical verification of the same as directed by the Hon. Court.*" It is submitted that the RC-II has merely made a mention in the 7th Report at Annexure A2 & A3 (**Annexure RIV &RV**) of already finalized 281 survey numbers for reference purpose only, and that the said survey number 194 of Sancoale village being



part of aforesaid 281 survey numbers, had also been reviewed as per the three criteria by the RC-II in the 3rd Report published in September 2021.

19. It is submitted that the sample point given in the said survey number was physically verified on ground by the concerned Sub Committee with respect to species composition and was found to qualify for 75% species composition criteria, but the adjoining sample points given in the survey numbers adjoining to the survey number 194 were not qualifying for species composition and as such, the survey number 194 was not qualifying for the other criteria, viz. for area, i.e. for criteria of 5 hectare or for contiguous patch of forest area. As is evident from the site inspection/ground verification report of the sample points given in the Sancoale village (**Annexure RVII**) and from the Map depicting



sample points given in Survey no. 194 & adjoining survey no.s of Sancoale village (**Annexure RVIII**). Because of area criteria, it was not qualified in the RC-II in its 3rd interim report published in September 2021. It is wrong and misrepresentation of facts by the Applicant that *“RC-II has further arbitrarily reviewed 272 survey numbers out of the 550 survey numbers identified and finalized by the Thomas and Araujo Committee, which included the said property i.e. survey no. 194/1 of village Sancoale... and has excluded the same from the list of finally identified private forests, without conducting physical verification of the same as directed by this Hon’ble Court.”* It is submitted that though the sample point given in the said survey number, as physically verified on ground with respect to species composition was found to qualify for 75% species



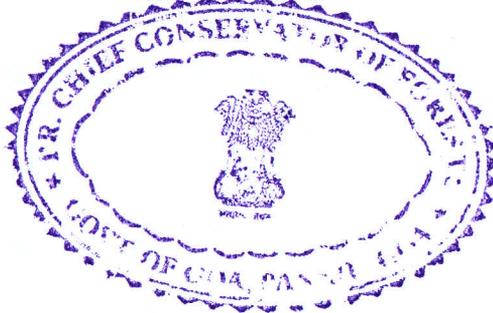
composition criteria, but the adjoining sample points given in the survey numbers adjoining to the survey number 194 were not qualifying for species composition and as such, the survey number 194 was not qualifying for the other criteria, viz. for area, i.e. for criteria of 5 hectare or for contiguous patch of forest area. Because of area criteria, it was not qualified in the RC-II in its 3rd interim report published in September 2021. It is submitted that RC-II has not revisited or reviewed the areas already reviewed/ excluded as private forest on the basis of legal opinion obtained from the Ld. Advocate General/ directions of State Government (**Annexure R III & R II**). The survey numbers already reviewed/ excluded and published in previous Reviews have merely been mentioned at Annexure A2 & A3 of the 7th Report just for reference purpose only. It is not



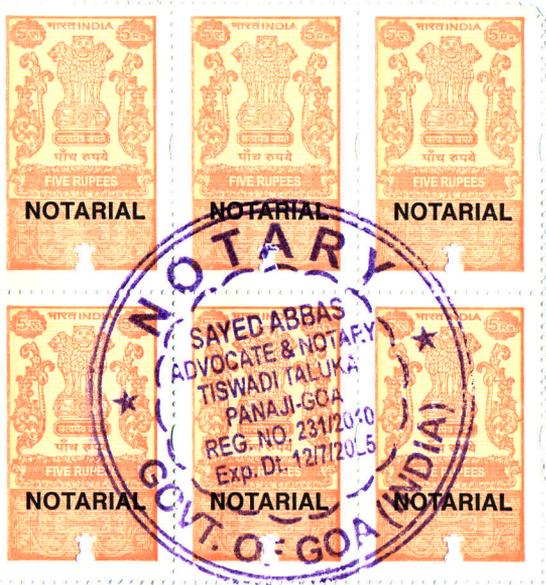
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true to say that the RC-II has violated directions of the Hon'ble Tribunal by arbitrarily reviewing these 272 survey numbers also.

Solemnly affirmed on this the 26 the day of July, 2024 at Goa.




Chief Conservator of Forests
Altinho. Panaji - Goa
Affiant



Solemnly affirmed before me by
Shri / Smt. Heaveen Kumar Raghav
who has been identified by
To Care
whom I personally know
Reg. No: 5147/2020 Dated: 26/07/2024


SAYED ABBAS
Advocate & Notary
Tiswadi Taluka
Panaji, Goa 403001
Reg. No.231/2010