

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****WESTERN ZONE AT PUNE****ORIGINAL APPLICATION NO. 45 OF 2021/WZ****IN THE MATTER OF:**

Syamantak Trust

...Applicant

Versus

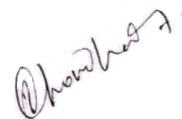
State of Maharashtra &amp; Ors.

...Respondents

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Through


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Place:- Pune/Delhi

Dated:- 21.01.2023

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

**ORIGINAL APPLICATION NO. 45 OF 2021/WZ**

**IN THE MATTER OF:**

Syamantak Trust	...Applicant
Versus	
State of Maharashtra & Ors.	...Respondents

**REJOINDER ON BEHALF OF THE APPLICANT TO REPLY OF  
RESPONDENT NO. 3 DATED 25.08.2022**

**MOST RESPECTFULLY SHOWETH:**

1. That this Rejoinder is being filed in response to the Reply of the Respondent No. 3, i.e., the District Collector, Sindhudurg District, Maharashtra dated 25.08.2022. At the outset, the Applicant denies the contents of the Reply filed by Respondent No. 3 unless expressly admitted or are of matter of record.
2. That the Applicant has filed the above titled Original Application dated 23.06.2021 before the Hon'ble NGT against the gross violations of the Wetland (Conservation and Management) Rules, 2010 (hereinafter referred to as "**Rules, 2010**"), the Hon'ble Supreme Court order dated 14.10.2017 in ***M. K. Balakrishnan & Ors. v. Union of India & Ors. (WP (Civil) 230 of 2001)*** and the Wetland (Conservation and Management) Rules, 2017 (hereinafter referred to as "**Rules, 2017**") in the Dhamapur Lake area, Sindhudurg, through illegal reclamation and construction of residential property and concrete wall in the wetland area, illegal dumping of construction and demolition waste, installation of borewell, all located within the High Flood Line (HFL) of the Dhamapur wetland area.

3. The Respondent has relied on the Site Visit Report dated 21.10.2021 prepared by the Committee appointed and constituted by the Hon'ble Tribunal vide its order dated 15.07.2021 (hereinafter referred to as "**Site Visit Report**"). The Response of the Applicant dated 29.01.2022 to the Site Visit Report and the Additional Affidavit dated 05.11.2022 of the Applicant should be read as part and parcel of this Rejoinder to the Reply of Respondent.
4. That at the outset, the Applicant herein has given below a summary of the submissions made in this Rejoinder to the Reply filed by Respondent No. 3:

#### **PRELIMINARY SUBMISSIONS**

5. **Dhamapur Lake is a wetland and has to be protected as per the directions of Hon'ble Supreme Court in M.K. Balakrishnan & Ors. v Union of India & Ors.**
  - a. It is submitted that the Dhamapur Lake has been identified as a wetland in the Brief Document published by the Ministry of Environment, Forest and Climate Change (**Annexure-A-2 of the Additional Affidavit of the Applicant, pages 291-312**). As per Rule 7(1) of Rules, 2017, the concerned department shall within a period of one year from the date of publication of rules prepare a Brief Document for the wetland. As per Rule 7(1), these Brief Documents are prepared for those wetlands which have been identified to be notified. The Brief Document mentions its unique feature as a historic lake associated with the Bhagwati Mandir and that it is an urban dam. Moreover, it is a part of the Ministry of Environment, Forest and Climate Change's list of wetlands for rejuvenation within the Government of India's 100 Days Programme.

A copy of the map of wetlands for rejuvenation within Government of India's 100 Days Programme is annexed herewith as **Annexure-1.**

b. Without prejudice to the submissions made in paragraph 5(a), it is submitted that the Hon'ble Supreme Court in its order dated 08.02.2017 in ***M.K. Balakrishnan & Ors. v Union of India & Ors. (Writ Petition (Civil) No. 230 of 2001)*** (**Annexure A-3 of the Additional Affidavit dated 03.11.2022 of the Applicant**), directed the applicability of the Wetland (Conservation and Management) Rules, 2010 (hereinafter referred to as "Rules, 2010") to all 2,01,503 wetlands that have been mapped by the Union of India in the National Wetland Inventory & Assessment. All these wetlands were of an area more than 2.25 hectares. The over laid map showing the Google image of the Dhamapur Lake over the map of the wetlands of Sindhudurg district as mapped in the National Wetland Atlas is submitted in the Additional Affidavit dated 03.11.2022 of the Applicant (**Annexure A-1, pages 289-290**) shows that Dhamapur lake, Sindhudurg is mapped in the National Wetland Atlas and therefore, Rule 4 of Rules, 2010 which provides for restriction on activities in the wetlands is applicable on Dhamapur Lake as per the order of the Hon'ble Supreme Court.

6. **It is submitted that the area of the Dhamapur Lake is 61.44 ha.**

a. It is submitted that the area of Dhamapur Lake in its Brief Document published by the Ministry of Environment, Forest and Climate Change is mentioned as 61.44 ha under point 2.1. Therefore, the contention of Respondent No. 3 that the area of the lake has increased from 35.99 Ha to

43.30 Ha is misleading and an attempt to falsify the area of the lake by contending that currently the area of the lake is 43.30 ha.

**7. The area and the boundary of the Dhamapur lake wetland has been determined and hence, the private construction and construction of well by agricultural department is an encroachment on the wetland.**

a. It is submitted that the geographical coordinates of the lake has been provided in the Brief Document of the lake published by MoEF&CC. In addition, the area of the wetland has been determined in the same Brief Document as 61.44 ha. The boundary of the lake has been defined in the map prepared by the Maharashtra Remote Sensing Application Centre (hereinafter referred to as "MRSAC") for the Deputy Collector of Sindhudurg (**Annexure-A-5 of the Additional Affidavit of the Applicant**). The yellow line in the MRSAC map indicates the demarcation of the Dhamapur lake and the green dotted line indicates the Buffer Zone of 50 metres from the demarcated Dhamapur lake area.

b. It is clear from the perusal of the MRSAC map that the constructions undertaken by the private parties have been marked as "illegal reclamation" and "illegal construction" and the wall constructed by the Agriculture Department have been marked as "illegal well construction".

**8. Construction of RCC well by the Agricultural Department is in violation of Rules, 2017 as it was built within 50 metres from the High Flood Line of the Dhamapur wetland area.**

a. It is submitted that the RCC well structure is built within 50 metres from the High Flood Line of the Dhamapur Lake as is evident from the map prepared by the MRSAC. Any permanent structure, except boat jetties are not allowed

within 50 metres from the High Flood Line of the wetland area as per Rule No. 4(2)(vi) of Rules, 2017. Rule 4(2)(vi) of the Rules, 2017 reads thus:

*"4. Restrictions of activities in wetlands.—(1) ...*

*(2) The following activities shall be prohibited within the wetlands, namely,- (i)...(v)...*

*(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules;"*

Therefore, building a concrete well is also in violation of the Rules, 2017 as it is built within 50 metres from the High Flood Line.

b. Moreover, the old well that existed was made in traditional method using laterite stone, without concretisation of the well with a technique known as 'atraj technique' which is a sustainable and environment friendly technique to construct wells. Therefore, the construction by the Agricultural Department is not only an activity taking place in the zone of influence but was also unnecessary and unsustainable.

9. **The reclamation of wetland area through construction of concrete wall and excavation of soil done by Respondent No. 8 within 50 metres of High Flood Line of the lake is in violation of the Rules, 2017**

a. It is submitted that the coordinates with the title "illegal reclamation" on the mapping of the Dhamapur lake wetland done by the MRSAC show the mentioned construction on private land of Respondent No. 8 which clearly lies within the buffer zone of 50 metres from the High Flood Line of the Dhamapur wetland. Therefore, it is an illegal construction under Rules, 2017.

- b. That, however, the said construction might have submerged underwater before the site visit by the Committee on whose Report the Respondent No. 3 has relied upon.

10. **That the Hon'ble Tribunal has jurisdiction over the matter of illegal construction within 50 metres from the High Flood Line of the Dhamapur wetland.**

- a. That the construction done by the Respondent No. 7 on land owned by him within the buffer zone of the Dhamapur wetland is illegal. The Tahsildar, Malvan Taluka in its order dated 02.03.2021 (**Annexure A-4 of the Original Application**) had issued demolition order for the said construction of private residence of Respondent No. 7 because the said area is near the submerged area of the lake and within 20 meter from High Flood Line of the dam. A letter dated 18.03.2021 was sent by the Tahsildar, Malvan Taluka to the Public Works Department (**Annexure A-5 of the Original Application**) to inform that the department was informed by the Water Irrigation Department that the construction was done near to the high flood level of the lake but the demolition work of the illegal construction in the has not been carried out and that it should be carried out immediately for the protection of the wetland.
- b. It is submitted that the demarcation for the Dhamapur wetland lake area has been done by the MRSAC. The mapping clearly marks the construction of private residence as "illegal construction" in the buffer zone of Dhamapur lake which is well within 50 metres from the High Flood Line of the lake, therefore, is in violation of the Rule No. 2(2) (vi) of Rules, 2017.
- c. It is submitted that Respondent No. 7 challenged the above-mentioned demolition order of Tahsildar, Taluka Malvan before the Hon'ble Civil Judge at Oras, District Sindhudurg in

a Regular Civil Suit No. 04/2021. This demolition order is in regard to the illegal construction done in the High Flood Line of the Dhamapur lake, which is a wetland.

- d. It is submitted that as per Section 14 of the National Green Tribunal Act, 2010, (hereinafter called as "**NGT Act**") the Tribunal has the jurisdiction over all civil cases where a substantial question relating to environment is involved and when such questions arise out of the implementation of the enactments specified in Schedule I. Schedule I includes Environment (Protection) Act, 1986 in its list. The Rules, 2017 has been formulated in exercise of the powers conferred by section 25, read with sub-section (1) and clause (v) of sub-section (2) and sub-section (3) of section 3 and section 23 of the Environment (Protection) Act, 1986. Therefore the Hon'ble Tribunal has jurisdiction over any issue of violation of Rules, 2017, as in the above-mentioned Original Application. Section 14 of the NGT Act is reproduced below:

*"14. (1) The **Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.***

*(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon."*

- e. That the Hon'ble Bombay High Court held vide order dated 17.01.2013 in the matter of **Gadbhad S/o Bhavdu Sonne vs Ramrao S/o Bhavdu Sonne 2013 SCC Online Bom 82**, that when there is a question relating to environment, it is not maintainable before the Civil Court. The relevant portion of

the order of the Hon'ble Bombay High Court is reproduced below:

*"25. With coming into force of this provision, it can be seen that, the Civil Court's jurisdiction over the Civil cases/suits involving substantial questions relating to environment (including enforcement of any legal right relating to environment) and arising out of the implementation of enactments specified in Schedule I to the National Green Tribunal Act, 2010 is taken over by the Tribunal by virtue of section 14 of the said Act.*

*27. In light of these provisions of law, **a civil case/suit involving substantial question relating to environment (including enforcement of any legal right relating to environment)** and which arises out of the implementation of the Forest (Conservation) Act, 1980, **is not maintainable before the Civil Court.** However, the Civil cases/suits not involving any substantial question relating to environment and not arising out of the implementation of enactments specified in Schedule I to the National Green Tribunal Act, 2010 i.e. The Forest (Conservation) Act, 1980 shall continue to be entertained by the Civil Court as before. Question-C raised in the present reference is answered accordingly."*

A copy of the order of the Bombay High Court in the matter of **Gadbad S/o Bhavdu Sonne vs Ramrao S/o Bhavdu Sonne** is annexed herewith as **Annexure-2**.

- f. That Section 29 of the NGT Act bars the jurisdiction of a civil court in matters of questions relating to claim for relief,

compensation or restitution of environment damaged, therefore, the Respondent cannot rely on the pending matter of the Regular Civil Suit in the Civil Court, Sindhudurg to not demolish the illegal structure constructed on the Dhamapur lake wetland as per the Tahsildar's order. The extract of Section 29 of NGT Act reads as follows:

*"29. Bar of jurisdiction*

*(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.*

*(2) **No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged** which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment shall be granted by the civil court."*

**REJOINDER TO REPLY BY RESPONDENT NO. 3 DATED  
25.08.2022**

**PARA WISE REPLY**

11. That the submissions in paragraph 1 need no response.
12. That the submissions in paragraphs 2 and 3 are matter of record and need no response.
13. That the contents of paragraph 4 are denied for being misleading. It is denied that the Dhamapur lake was constructed for the purpose of the drinking water and agricultural use. In fact, the Brief

Document categorises the lake as a “natural” wetland under point no. 2.2. The Brief Documents also states its multiple ecosystem services, such as providing habitat for migratory species, acting as climate regulator/carbon sink, moderating extreme events/flood buffer, water purification, groundwater recharge, supporting noteworthy animal and plant species, etc. This, in fact, shows that Dhamapur lake was a naturally existing water body and not constructed for any specific purpose.

14. That the contents of paragraphs 5 and 6 are matter of record and need no response.
15. That the contentions made in paragraph 7 are being denied.
  - i. That in the contention in first and second sub-paragraph of paragraph 7 that the Dhamapur Lake falls under the exception within the definition of a wetland under the Rules, 2017 is denied for being misleading. It is reiterated here that the Dhamapur lake is an identified wetland by the MoEF&CC and the same has been substantiated in paragraph 5(a) of the present Rejoinder and is not repeated here for the sake of brevity.
  - ii. That the contention in third sub-paragraph of paragraph 7 that the area of the lake has increased from 35.99 Ha to 43.30 Ha is denied being a misleading statement. It is submitted that the area of Dhamapur Lake in its Brief Document published by the Ministry of Environment, Forest and Climate Change is mentioned as 61.44 ha. Therefore, it is an attempt by the Respondent No. 3 to falsify the area of the lake by contending that currently the area of the lake is 43.30 ha.
16. That the contention in paragraph 8 that the demarcation of Dhamapur lake boundaries, flood plain, zone of influence, etc. has not been completed and therefore it is not clarified that there is reclamation and encroachment upon land of Dhamapur lake, is denied. The response to this contention has been substantiated in

the paragraph 7(a) of the present Rejoinder and is not repeated here for the sake of brevity.

17. That the Respondent has stated in paragraph 9 that the construction of private residence by Respondent No. 7 is on the banks of Dhamapur lake.
18. That the submissions in paragraph 10 need no response.
19. That the submissions in paragraph 11 need no response.
20. That the submissions in paragraph 12 that the wetland rules are not applicable to the Dhamapur lake because it is constructed for drinking water and irrigation purpose is denied as being false. The response to the contention has been substantiated in paragraph 13 of the present Rejoinder and is not repeated here for the sake of brevity.
21. That the contention in paragraph 13 that the strengthening of the existing well in RCC structure by the Agriculture Department to provide water for the horticulture nursery maintained by them is not in violation of the Rules, 2017 as it is done with necessary approvals, is denied. This is because the construction has been done within 50 metres from the High Flood Line of the lake, which is prohibited under the Rules. It is further substantiated in paragraph 8 of the present Rejoinder and is not repeated here for the sake of brevity.
22. That the contents of paragraph 14 are denied. The committee at the time of site visit did not find excavation of soil and concrete wall on the plot of Respondent No. 8 because the wall lies in the submergence zone of the lake as submitted in para 11 of the present Rejoinder and hence, might have submerged in water at the time of site visit by the Committee.
23. That the Respondent in paragraph 15 has submitted that the BDO, Malvan filed its Compliance report on 22.10.2021 as per the directions of the Committee in the Site Visit Report (**Annexure-5 of the Reply, Page 294**). It is submitted that the directions given were to provide adequate capacity dustbins for collection of wet

waste and dry waste in order to deal with the solid waste dumped on the private land in front of the Bhagwati Mandir, at the bank of Dhamapur lake (**Page 4, Para 5(a) of Site Visit Report dated 21.10.2021**). It is submitted that the Report of BDO, Malvan merely states that the dustbins have been provided and does not state anything about the removal of waste. It is further submitted that the images dated 27.11.2022 show that solid waste is still being dumped and burnt within 50 metres from the HFL of the Dhamapur lake.

The photographs of waste dump at the site have been annexed herewith as **Annexure-3**.

24. That in response to the submissions in paragraph 16 regarding removal of debris of construction work in the areas of Bandh Vaas, it is submitted that regarding the removal of the construction material the Compliance report dated 02.12.2021 of Dy. Executive Engineer, Water resources Department, i.e., Respondent No. 6 (**Page 298, Annexure-6 of the Reply**) merely mentions that the removal was in process as on date 22.10.2022 and therefore, the Respondent is required to furnish proof of removal of debris.
25. That the submissions in paragraphs 17 and 18 pertain to facts and need no response.
26. That the submissions in paragraph 19 need no response.
27. That the submissions in paragraph 20 are denied for being false. The area of the lake has been defined and the demarcation has been done as submitted and substantiated in paragraph 7 of the present Rejoinder and is not repeated here for the sake of brevity. It is also denied that the Dhamapur lake is exempted from the definition of the wetland. The response to the said contention is substantiated in paragraph 5 of the present Rejoinder and is not repeated here for the sake of brevity.
28. Thus, in light of the above, the prayers in the Original Application should be allowed.

29) Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.



**APPLICANT**

**THROUGH**



**RITWICK DUTTA**



**RAHUL CHOUDHARY**  
**ADVOCATES**

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Mobile: +91 9312407881  
Email: [litigation.life@gmail.com](mailto:litigation.life@gmail.com)

**VERIFICATION**

Verified by Sachin Anand Desai, authorised representative of Applicant Organisation, S/o Anand Desai, aged about 48 years, R/o Syamantak, 163, at post Dhamapur, Taluka Malvan, District Sindhudurga- 416605, do hereby verify that the contents of Paragraphs 1 to 29 are true to my personal knowledge and nothing material has been concealed therefrom.



**APPLICANT**

**PLACE:**

**DATE:**



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONAL BENCH AT PUNE



OA NO. 45 OF 2021

**IN THE MATTER OF:**

**Syamantak Trust**

**...Applicant**

**Versus**

**State of Maharashtra & Ors.**

**...Respondents**

**AFFIDAVIT**

I, Sachin Anand Desai, authorised representative of Syamantak Trust, S/o Anand Desai, aged about 48 years, R/o Syamantak, 163, at post Dhamapur, Taluka Malvan, District Sindhudurga- 416605 do hereby solemnly affirm and declare as under:

1. That I am the authorized representative of Applicant in the above titled Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

**DEPONENT**

**VERIFICATION**

Verified on this 13<sup>th</sup> day of December 2022 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.

I, Sachin Anand Desai Solemnly Affirmed that this is my name and signature & that the contents of this affidavit are true.

Signature of Deponent

Signature of Notary

Signed before me

**MAHESH D. KUNTE**

NOTARY

Govt. of India

AARADHANA' Shiriramwadi  
Mumbai Goa Highway, Tal-Kuda  
Dist-Sindhudurg, Maharashtra

**DEPONENT**

This document is noted at  
Sr. No. 26  
in the Notarial Register.



## Management planning

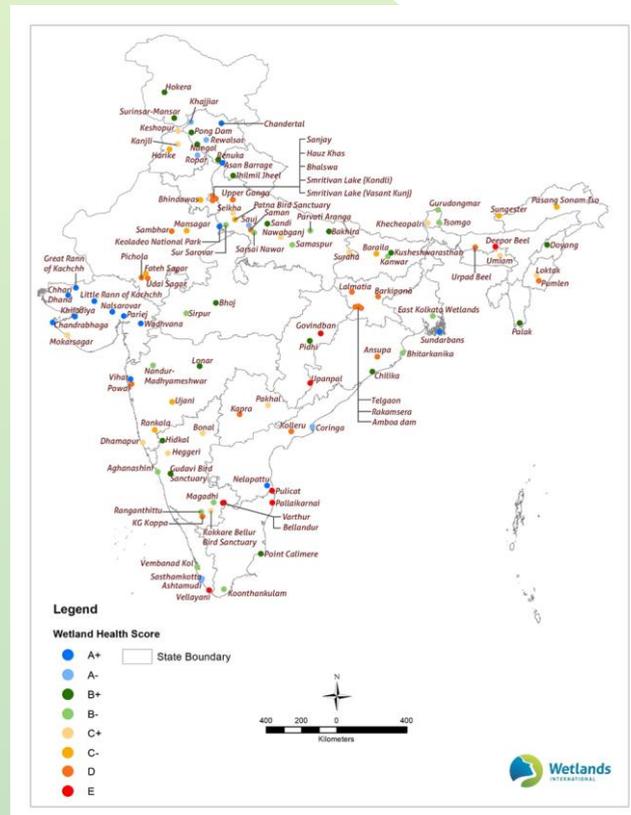
The information on wetlands biodiversity and ecosystem services values and threats (from the brief documents) and wetlands condition forms the basis of a management plan for wetland rejuvenation. At the first stage, a framework plan is developed which highlights;

- Key management components and actions required to maintain ecosystem services and biodiversity values and address threats
- Institutional arrangement for management plan implementation and inter-agency coordination
- Monitoring plan to assess effectiveness of management plan implementation
- Financing needs and convergence sources

Funding for the management plans is linked with the MoEFCC's National Plan for Conservation of Aquatic Ecosystems. The framework plans will be detailed as per Ministry's guidelines within first six months of implementation.

## Replication and upscaling

The wetlands rejuvenation programme has been rolled out in all districts of India. The State Wetlands Authorities are enlisting atleast two priority wetlands in each district. The Ministry is also creating a pool of trainers and Organizations which would provide handholding support to the state governments in planning for wetlands rejuvenation using the four-pronged approach.



## Contact

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# Rejuvenating Wetlands

*A Transformative Idea of The Government of India's 100 Days Programme*



Ministry of Environment,  
Forest and Climate Change  
Government of India

## About the programme

The Ministry of Environment, Forest and Climate Change (MoEFCC) aims to conserve a network of healthy wetlands which sustain rich biodiversity and provide wide ranging ecosystem services for societal well-being.

'Wetlands rejuvenation' is a transformative idea of the Government of India, within the framework of its 100 days programme. Under this programme, the MoEFCC aims at undertaking systematic rejuvenation of selected wetlands on the basis of well-defined and targeted management plans and with active stakeholder collaboration. The State Wetlands Authorities and wetlands managers are at the forefront of programme implementation, with the Ministry providing an enabling environment in the form of programmatic framework, capacity development, and financing (on convergence basis).

The programme is structured around a four-pronged approach:

1. Developing baseline information
2. Rapid assessment of wetlands condition
3. Enabling stakeholder platforms
4. Management planning

Technical handholding for the programme is done by six knowledge partners: Wetlands International South Asia, Salim Ali Center for Ornithology and Natural History, World Wide Fund for Nature India, Chilika Development Authority, The Environmental Planning and Coordination Organization and Gujarat Ecological Education and Research Foundation.

In the first cycle of the programme, 130 wetlands were selected in consultation with State Governments. Six handholding workshops in all parts of the country were organized by the MoEFCC to impart technical support to the wetlands managers in implementing the programme



## Developing baseline information

For each wetland, a brief document has been prepared in a standard format. Following information has been collected :

- a) Identification, Location and Jurisdiction
- b) Site characteristics
- c) Biodiversity
- d) Ecosystem Services
- e) Pre-existing rights and privileges
- f) Present and potential threats

For wetlands to be notified under Wetlands (Conservation and Management) Rules, 2017, information on activities proposed to be prohibited (other than those mentioned in Wetlands Rules), regulated and permitted is also provided in the brief document.

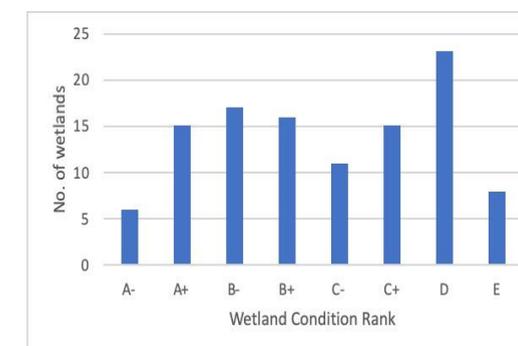
## Rapid assessment of wetlands condition

A rapid assessment of wetlands condition in the form of a report card system was done. Following nine indicators under four categories were used for the assessment:

1. **Wetland area** (% area converted to non-wetland use since 2000)
2. **Hydrological regimes** (extent of choking of natural inlets and outlets, % of water quality samples meeting the desired level of Biological / Chemical Oxygen Demand)
3. **Biodiversity** (% wetland area covered by invasive macrophytes, annual January waterbird count as a proportion to maximum count observed count in last 10 years (only for protected areas of high ornithological value)
4. **Governance** (Status of wetlands mapping, management plan and notification under extant regulation)

For each indicator, a score was assigned based on the extent to which the desired values were met. A wetland condition score was computed by using a weighted average of individual indicator scores. These were subsequently converted into ranks ranging from A+ (very good) to E (very low).

The assessment indicated that every one in four wetlands has low to very low rank in terms of present wetland condition (category D to E). Wetlands in urban and peri-urban areas had lower condition rank as compared to the others.



## Stakeholder platforms - 'Wetlands mitra'

For each wetland, an informal, voluntary and non-statutory network of concerned citizens by the name of 'Wetland mitra' has been constituted. This is to foster and promote community engagement in wetlands conservation and management efforts. By involving themselves within the wetland mitra

network, citizens gain an opportunity of shaping wetlands management by bringing onboard indigenous and local knowledge, and views of diverse stakeholder groups. As wetland mitra network member, the communities also build their capacity on various dimensions of wetlands management.



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[2013(3) Mh.L.J.]

FOREST (CONSERVATION) ACT, SECTION 2A : SCOPE

(R. M. Borde and U. D. Salvi, JJ.)

GADBAD s/o BHAVDU SONNE

Plaintiff.

vs.

RAMRAO s/o BHAVDU SONNE

Defendant.

**(a) Forest (Conservation) Act (69 of 1980), S. 2-A** — Term “other authority” used in a phrase “State Government or other authority” means and includes instrumentalities or agencies of State Government and would not mean and include the Courts which has judicial functions to perform. (Para 10)

**(b) Forest (Conservation) Act (69 of 1980), S. 2** — Encroachment of forest land — Regularisation of encroachment — Making anything confirmable to the rules by condoning any procedural irregularity can be understood as an act of regularisation. (Para 11)

**(c) Forest (Conservation) Act (69 of 1980), S. 2** — Regularisation of encroachment — It is not the job of the Civil Court to regularise an encroachment but to adjudicate the rights of the parties making claim to any land save and except the limitations on its jurisdiction either express or implied. (Para 12)

**(d) Forest (Conservation) Act (69 of 1980), S. 2** — Regularisation of encroachment — Restrictions as contemplated in section 2 therein on passing of any directions by the State Government, may be by virtue of Government Resolutions dated 12-9-1979 have been clamped on the hands of the State Government or other authorities acting as instruments or agencies of the State Government — An action under said Resolution to regularize encroachment over forest land if undertaken prior to the commencement of the Forest (Conservation) Act, 1980, is saved from the rigour of the Act, it being prospective in operation. (Paras 13 and 18)

**(e) Forest (Conservation) Act (69 of 1980), S. 2(1)(c), National Green Tribunal Act (19 of 2010), SS. 14 and 29 and Civil Procedure Code, S. 9** — Jurisdiction of Civil Court — Encroachment of forest land — A civil case/suit involving substantial question relating to environment (including enforcement of any legal right relating to environment) and which arises out of the implementation of the Forest (Conservation) Act, 1980, is not maintainable before the Civil Court. (Para 27)

For plaintiff : R. V. Gore

For defendant : S. K. Rahane

For State : S. K. Tambe, A.G.P.

**List of cases referred :**

1. T. N. Gondavarnan Thirumulpad vs. Union of India, 1997(2) SCC 267 (Paras 14, 15)
2. Nature Lovers Movement vs. State of Kerala and ors., 2010(1) Mh.L.J. (S.C.) 705 = 2009(5) SCC 373 (Paras 14, 17)
3. Dhulabhai vs. State of M. P., 1969 Mh.L.J. (S.C.) 1 = AIR 1969 SC 78 (Para 14)

**JUDGMENT**

**U. D. SALVI, J. :—** This is a reference made by Jt. Civil Judge, Junior Division, Kannad under section 113 of the Code of Civil Procedure, for seeking answers to the following questions :

Reference Case No. 1 of 2011 decided on 17-1-2013. (Aurangabad)

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- (A) Whether Civil Court can regularise encroachment over forest land by declaration of ownership in contravention and availing bar created by section 2 of Forest (Conservation) Act, 1980 ?
- (B) Whether Government Resolution dated 12-9-1979 is still good to regularise encroachment over forest land in contravention of section 2 of Forest (Conservation) Act, 1980 ?
- (C) Whether Civil Suit is maintainable to protect the encroachment over forest land in contravention of section 2 of Forest (Conservation) Act, 1980 ?

2. Genesis of this reference lies in Regular Civil Suit No. 153/2007 instituted by one Gadbad Bhavdu Sonne against his brother Ramrao Bhavdu Sonne in the Court of the Civil Judge, Junior Division at Kannad for the following relief :

“(1) Decree for perpetual injunction permanently restraining the defendant Ramrao from interfering in possession of the plaintiff Gadbad to the extent of 2 Hectors of landed property in the portion on the northern side of Gat No. 162 (Old Survey No. 38), situate at Mehunrampurwadi, Taluka Kannad, District Aurangabad.”

3. According to the plaintiff therein, 10 acres of land from the said land totally admeasuring 1400 acres, a forest land belonging to the State/Government, was encroached by father of the rival parties to the suit; and the encroachments thus made were regularised by the Government and the said land was being cultivated by his father till his demise in 1982 and thereafter the plaintiff and the defendant divided the said encroached portion of land in two equal parts, northern and southern, the northern portion falling to the share of the plaintiff and the southern to the share of the defendant. Since then, the plaintiff stated, the said land was being separately cultivated by the plaintiff and the defendant.

4. The plaintiff further stated that the defendant had filed a suit being Regular Civil Suit No. 372/1998 in the Court of Civil Judge, Senior Division, Aurangabad against the State and District Forest Officer for declaration of ownership of the portion of the said landed property admeasuring 5 acres (2 Hectors), which fell to his share, and injunction restraining the defendants therein the State and District Forest Officer from causing obstruction to the possession of the plaintiff over the said land. The said suit was decreed against the defendants therein following the judgment dated 17-12-1998, passed in the said suit by 2nd Jt. Civil Judge, Senior Division, Aurangabad.

5. The defendant herein has contested the said suit with the written statement dated 1-11-2007. He specifically denied that 2 Hectors of northern portion of the said landed property was in possession of the plaintiff since many years and their father belonged to backward caste. The defendant specifically contended that by virtue of the decree in Regular Civil Suit No. 372/1998 he has become owner of the 5 acres of the said landed property and the plaintiff was taking disadvantage of the boundaries of the said landed property indicated in the said suit.

6. With reference to entries in the revenue record, the learned Civil Judge observed that out of 2 Hectors and 10 ares of forest land encroached upon by one Kishan, Dhana and father of the parties to the present suit, the father of the

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parties Bhavdu was having only 5 ares of land. Learned Civil Judge further observed that the defendant succeeded in recording his name in the record of rights pertaining to 2 hectares of the land on the basis of the decree for declaration of ownership of land admeasuring 2 hectares from land Gat No. 162 passed in Regular Civil Suit No. 372/1998. In the opinion of the learned Civil Judge the parties to the suit are playing tactics to grab forest land by getting regularised their possession over the land admeasuring 2 hectares in place of 5 ares land held by their father. Learned Civil Judge further opined that the decree in Regular Civil Suit No. 372/1998 is in contravention of section 2 of Forest (Conservation) Act, 1980; and the forest land which has not been regularised in favour of the father of the parties to the said suit, cannot be held regularised on the basis of the decree passed in favour of the defendant.

7. It appears that the learned Civil Judge has misconstrued the phrases “State Government or other authority” used in section 2 of the Forest (Conservation) Act, 1980 as well as “regularisation of encroachment” used in the Government Resolutions.

8. In the first place, it is to be made clear that the term “Court” though defined nowhere in law, means an organised body to which sovereign powers to do justice are transferred by the State. Doing justice means to give what is due to one to whom it is due and, therefore, in the process of doing justice the function of the Civil Court is to determine rights of the parties litigating before it on application of law to the facts in a civil dispute and make declarations of the rights so determined and/or to pass injunctions, either mandatory or prohibitory, for enforcement of those rights. Thus, the Court is an arbiter of the cause and not a player in it.

9. On this backdrop, it is necessary to construe the provisions of the Forest (Conservation) Act, 1980. This Act was enacted to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto. Essentially, conservation of forests is executive function. Section 2 of this Act provides for restrictions on de-reservation of forests or use of forest land for non forest purpose and thus, regulates the executive function of the State in that regard. Section 2 of the Forest (Conservation) Act, 1980 reads as under :

*“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose. — Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, —*

- (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forestland or any portion thereof may be used for any non-forest purpose;
- (iii) that any forestland or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

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- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.”

Explanation :— For the purposes of this section “non forest purpose” means the breaking up or clearing of any forest land or portion thereof for

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticultural crops or medicinal plants;
- (b) any purpose other than re-afforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

10. Grievance Redressal mechanism in respect of a grievance occasioned as a result of directions under the foregoing provisions of law was provided with incorporation of section 2-A in the said Act. If the provisions are read together, it is not difficult to perceive that the term “other authority” used in a phrase “State Government” or other authority” means and includes instrumentalities or agencies of State Government and would not mean and include the Courts which has judicial functions to perform.

11. Secondly, it is also necessary to understand what is regularisation. Webster defines the term “regular” to mean confirmable to a rule or methodical. Thus, making anything confirmable to the rules by condoning any procedural irregularity can be understood as an act of regularisation. This is certainly not a job of Civil Courts. Government Resolutions in that regard are the executive instructions to the State officials to act in a particular way as regards the subject matter of such Government Resolutions.

12. Having understood the meaning of the aforesaid terms, it can be seen that the first question – Question-A regarding the competency of the Civil Court to regularise the encroachments over forest land in light of the provisions of the said Act would not arise as it is not the job of the Civil Court to regularise an encroachment but to adjudicate the rights of the parties making claim to any land save and except the limitations on its jurisdiction either express or implied.

13. The Forest (Conservation) Act, 1980 came into force on 25th day of October 1980 by virtue of section 1(3) of the said Act. With onset of this law, the restrictions as contemplated in section 2 therein on passing of any directions by the State Government, may be by virtue of Government Resolutions dated 12-9-1979 have been clamped on the hands of the State Government or other authorities acting as instruments or agencies of the State Government. Obviously, therefore, Government Resolution dated 12-9-1979 is not good to regularise encroachment over forest land in contravention of section 2 of the Forest (Conservation) Act, 1980.

14. Referring to the judgment delivered by the Hon’ble Supreme Court in the case of *T. N. Gondavarnan Thirumulpad vs. Union of India, 1997(2) SCC 267*, learned Advocate Mr. Gore for the plaintiff submitted that the provisions of the Forest (Conservation) Act, 1980 are applicable to all forests so understood

irrespective of the ownership or classification thereof. He further submitted that, if the Government Resolution dated 19-9-1979 had been issued with the prior approval of the Central Government to regularise the encroachment made prior to 25-10-1980 – the date on which the said Act came into force, then the said Government Resolution is still good to regularise encroachment over forest land. In this context, he invited our attention to the judgment delivered by the Hon'ble Supreme Court in the case of *Nature Lovers Movement vs. State of Kerala and ors.*, 2010(1) Mh.L.J. (S.C.) 705 = 2009(5) SCC 373. Adverting to section 2 of the Forest (Conservation) Act, 1980, he further submitted that there is no express or implied exclusion of the Civil Court by virtue of the said provision and thus, the Civil Suit instituted for perpetual injunction and not for the declaration of ownership would be maintainable. Judgment delivered in *Dhulabhai's case. Dhulabhai vs. State of M. P.*, 1969 Mh.L.J. (S.C.) 1 = AIR 1969 SC 78 by the Hon'ble Apex Court is pressed in service to lend support to this submission.

. 15. In *T. N. Godavarman's case* (supra), while clarifying the scope of Forest (Conservation) Act, 1980, the Hon'ble Supreme Court interpreted the word "forest" in following terms :

"4. The Forest Conservation Act, 1980 was enacted with a view to check further de-forestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutory recognised forests, whether designated as reserved, protected or otherwise for the purpose of section 2(i) of the Forest Conservation Act. The term "forest land", occurring in section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."

16. Reading of section 2 of the Forest (Conservation) Act, 1980 amply makes it clear that the restrictions have been imposed on :— (1) de-reservation of forest, (2) use of forest land for non-forest purpose, (3) creation of interest or other proprietary rights of any private individual authority, Corporation, agency or such other organisation not owned, managed or controlled by Government in any forest land, and (4) clearing of trees which have grown naturally in any forest land even for the purpose of using it for reforestation. Explanation appended to this provision regarding the term "non-forest purpose" further widens the scope of this non-forest purpose by bringing into its sweep breaking or clearing of any forest land or portion thereof for cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticultural crops or medicinal plants and any purpose other than reforestation save and except any work relating or ancillary to conservation, development and management of forests and wild life. It is, therefore, not difficult to find that, an act of encroachment on a forest land by any

private individual or any other organisation not owned, managed or controlled by Government amounts to invasion of the forest land for its use for any non-forest purpose and in any event its regularisation by the State amounts to virtual assignment of the forest land in favour of the encroacher – a private person.

17. The Hon'ble Apex Court, in *Nature Lovers Movement's* case (supra), on advertng to the National Forest Policy, 1988 and the provisions of Forest (Conservation) Act, 1980 ruled as follows in the appeal preferred against the judgment of the High Court of Kerala in the matter of assignment of forest land to unauthorised occupants/ encroachers after seeking approval from the Central Government :

“27. In the result, the appeal is disposed of in the following terms :

- (1) The policy decision taken by the Government of Kerala to assign 28588.159 hectares of forest land to unauthorized occupants/ encroachers after seeking approval from the Central Government does not suffer from any legal infirmity and the High Court rightly declined to interfere with the said decision.
- (2) After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government.
- (3) Conclusion No. D recorded by the High Court in para 103 of the impugned judgment is legally unsustainable and is set aside.
- (4) As and when the State Government decides to assign 10,000 hectares of forest land to unauthorised occupants/ encroachers, it shall do so only after obtaining prior approval of the Central Government and the latter shall take appropriate decision keeping in view the object of the 1980 Act and the guidelines framed for regularizaton of encroachments on forest land.”

18. None of the parties hereto have pointed out that there is approval from the Central Government to the Government Resolution dated 12-9-1979 in the matter of regularisation of the encroachments over forest land. In the result, Question-B needs to be answered negatively. However, it needs to be clarified that, an action under Government Resolution dated 12-9-1979 to regularize encroachment over forest land if undertaken prior to the commencement of the Forest (Conservation) Act, 1980, is saved from the rigour of the Act, it being prospective in operation.

19. Questions posed mainly arise out of encroachment over forest land. As discussed above, regulation of encroachment over forest land is an activity which is restricted by provisions of Forest (Conservation) Act, 1980. It can also be seen that, forest land as widely understood is an area covered with trees, saplings, plants, micro organisms and used as habitat by living creatures mostly other than human beings. Any encroachment, therefore, pre-supposes invasion by any

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private individual/person or any organisation of individuals of the forest land and consequent interference in the environment including natural habitat of flora and fauna.

20. Section 2(1)(c) of the National Green Tribunal Act, 2010 defines “environment” as under :

“(c) “Environment” includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, microorganism and property.”

21. Thus, any encroachment over forest land brings into its wake some questions relating to environment envisaged under the foregoing provision.

22. Answer to Question-C lies in the provisions of the Code of Civil Procedure, 1908 read in conjunction with provisions of National Green Tribunal Act, 2010. Ordinarily, Civil Courts will have jurisdiction to entertain, hear and dispose off the Civil disputes. Section 9 of the Civil Procedure Code, 1908 deals with the fundamental issue of jurisdiction in following terms :

“S. 9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

Explanation-I. A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation-II. For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.”

23. The provisions of Forest (Conservation) Act, 1980 particularly section 2 thereof give rise to new set of rights and obligations vis-à-vis forest state and private individual/s or the organisations not preexisting in common law. Generally speaking, wherever a right, not preexisting in common law, is created by a Statute and that Statute itself provided a machinery for enforcement of the right, both the right and remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then even in the absence of an exclusionary provision, the Civil Court’s jurisdiction is impliedly barred.

24. Section 14 of the National Green Tribunal Act, 2010 reads as under :

“14. (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose.

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Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”

Schedule I of this Act includes the Forest (Conservation) Act, 1980.

25. With coming into force of this provision, it can be seen that, the Civil Court’s jurisdiction over the Civil cases/suits involving substantial questions relating to environment (including enforcement of any legal right relating to environment) and arising out of the implementation of enactments specified in Schedule I to the National Green Tribunal Act, 2010 is taken over by the Tribunal by virtue of section 14 of the said Act.

26. Moreover, a bar to the jurisdiction of the Civil Courts in respect of the claim, which may be adjudicated upon by the Tribunal is expressed in section 29 of the National Green Tribunal Act, 2010 in the following words :

“29. (1) With effect from the date of establishment of the Tribunal under this Act, no Civil Court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No Civil Court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief for compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the Civil Court.”

27. In light of these provisions of law, a civil case/suit involving substantial question relating to environment (including enforcement of any legal right relating to environment) and which arises out of the implementation of the Forest (Conservation) Act, 1980, is not maintainable before the Civil Court. However, the Civil cases/ suits not involving any substantial question relating to environment and not arising out of the implementation of enactments specified in Schedule I to the National Green Tribunal Act, 2010 i.e. The Forest (Conservation) Act, 1980 shall continue to be entertained by the Civil Court as before. Question-C raised in the present reference is answered accordingly.

28. With these observations, the present reference stands disposed off with no order as to costs.

*Order accordingly.*

BOMBAY STAMP ACT, SCHEDULE I, ARTICLE 25

*(R. M. Savant, J.)*

JAYASINGH NARAYAN TUPE

*Petitioner.*

vs.

SAMBHAJI BABURAO PAWAR and others

*Respondents.*

**(a) Bombay Stamp Act (60 of 1958), Sch. I, Art. 25 Explanation —**  
*Document in the nature of a conveyance — Where the vendor agreed to hand*

W. P. No. 1312 of 2013 decided on 14-3-2013. (Bombay)

