

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

IN

ORIGINAL APPLICATION NO. 137 OF 2024

IN THE MATTER OF:

**NEWS ITEM TITLED "ENCROACHMENTS IN TUNGARESHWAR
DRIVING AWAY WILD ANIMALS" APPEARING IN THE
HINDUSTAN TIMES DATED 27.04.2024 APPLICANT**

VERSUS

**PRINCIPAL CHIEF CONSERVATOR OF FORESTS (H.O.O.F.)
MAHARASHTRA AND ORS.RESPONDENTS**

INDEX

SI. NO.	PARTICULARS	PAGE NO.
1.	REPLY COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 3 MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE REGIONAL OFFICE, NAGPUR.	5-10

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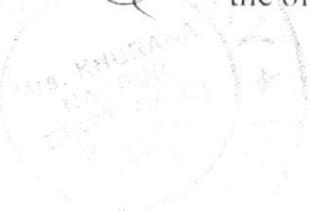
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REPLY COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT
NO. 3 MINISTRY OF ENVIRONMENT FOREST AND CLIMATE
CHANGE REGIONAL OFFICE, NAGPUR.

MOST RESPECTFULLY SHOWETH:

1. I, Dr. Purushottam R. Sakhare, S/o Shri Ramdas Sakhare, aged about 56 years, working as Scientist 'E', in the Regional Office of the Ministry of Environment, Forest and Climate Change, (hereinafter 'Ministry') at Nagpur, do hereby solemnly affirm and State as under:
2. That I am duly authorized to swear this affidavit and as such I am conversant with the facts of the present case and competent to swear the present affidavit.
3. That I have read and understood the contents of the accompanying reply and state that the same has been drafted under my instructions based on the official records.



STATEMENT OF FACTS:

4. Original Application has been registered suo motu on the basis of the as news item titled "Encroachments In Tungareshwar Driving Away Wild Animals" appearing in The Hindustan Times dated 27.04.2024 by the NGT, PB, New Delhi. The news item relates to the rampant, unauthorised construction that is driving wild animals away from Tungareshwar Wildlife Sanctuary in Palghar District, Maharashtra.

REPLY ON MERIT:

5. It is submitted that, with a view to ensure the ecological and environmental security and for the conservation, protection and management of wild life of the Country, the Wild Life (Protection) Act, 1972 came into force.
6. It is submitted that as per section 26A 1 (b) of the Wild Life (Protection) Act, 1972, when any area comprised within any reserve forest or any part of the territorial waters, which is considered by the State Government to be of adequate ecological faunal floral geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment, is to be included in a sanctuary, the State Government shall issue a notification specifying the limits of the area which shall be comprised within the sanctuary and declare that the said area shall be sanctuary on and from such date as may be specified in the notification.
7. It is further submitted that, the provisions of Section 29 of the Wild Life (Protection) Act, 1972 are as follows:

No person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied

in consultation with the National Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit.

8. It is further submitted that Section 33 of the Wild Life (Protection) Act, 1972 provides that the Chief Wild Life Warden shall be the authority to control, manage and protect all Sanctuaries in accordance with such management plans for the sanctuary approved by him as per the guidelines issued by the Central Government and in case the sanctuary also falls under the Scheduled Areas or areas where the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) is applicable, in accordance with the management plan for such sanctuary prepared after due consultation with the Gram Sabha concerned.
9. It is also submitted that as per section 34A of the Wild Life (Protection) Act, 1972, notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Conservator of Forests may,-
 - (a) evict any person from a sanctuary or National Park, who unauthorisedly occupies Government land in contravention of the provisions of this Act;
 - (b) remove any unauthorised structures, buildings, or constructions erected on any Government land within any sanctuary or National Park and all the things, tools and effects belonging to such person shall be confiscated, by an order of an officer not below the rank of the Deputy Conservator of Forests: Provided that no such order shall be passed unless the affected person is given an opportunity of being heard.

(2) The provisions of this section shall apply notwithstanding any other penalty which may be inflicted for violation of any other provision of this Act.
10. It is also submitted that as per section 36A of the Wild Life (Protection) Act, 1972, the State Government may, after having consultations with the local communities, declare any area owned by the Government, particularly the areas adjacent to National Parks and sanctuaries and those areas which link one protected area with another, as a conservation

reserve for protecting landscapes, seascapes, flora and fauna and their habitat.

11. It is submitted that as per section 51 (1) of the Wild Life (Protection) Act, 1972, any person who contravenes any provision of this Act (except Chapter VA and section 38J) or any rule or order made there under or who commits a breach of any of the conditions of any license or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both.
12. It is further submitted that in accordance with section 55 (b) of the Wild Life (Protection) Act, 1972, the Chief Wild Life Warden, or any other officer authorised in this behalf by the State Government subject to such conditions as may be specified by that Government may file complaints in the Court against the offences under the Act.
13. It is further submitted that the 'land' is a subject matter of State Government. The forest areas and the legal boundaries thereof are determined and maintained by the concerned State Government. That, inter-alia, being the repository of land records, State Government has the primary responsibility to determine status of any parcel of land, giving due regards to gazette notifications, provisions under State and Central Acts and concerned judgments and directions of the Hon'ble Supreme Court.
14. It is further submitted that in the case of unauthorised construction or illegal encroachments, the State Government is empowered to take action and initiate proceeding against the wrongdoers.
15. In view of the aforesaid facts, it is respectfully prayed that the Hon'ble Tribunal may be pleased to pass orders as deems fit in the circumstances of the case.



(~~DR. P. R. SAKHERE~~)
(Dr. P. R. Sakhere)

वैज्ञानिक 'ई' / Scientist 'E'

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय, नागपूर - ४४०००१
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