

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE

Original Application No.29/2023(WZ)

MRS. SYLVIA CARDOZO

& ORS

... APPLICANTS

VERSUS

STATE OF GOA & ORS

... RESPONDENTS

REPLY ON BEHALF OF RESPONDENT

NOS. 8, 9 & 10



MOST RESPECTFULLY SHOWETH:

Respondent Nos. 8, 9 and 10 (For the sake of brevity hereunder referred to as the "Respondents") state and submit as under:

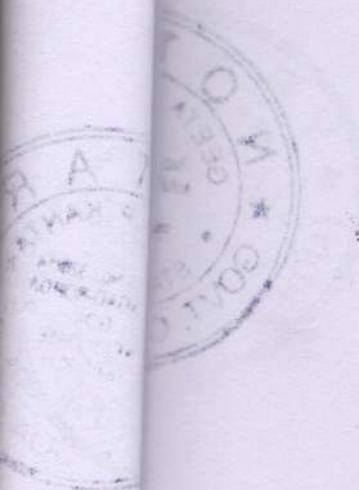
PRELIMINARY OBJECTIONS:

1. The above application is not maintainable in as much as the Applicants have raised an issue pertaining to identification of private forests which is governed by the Indian Forest Act. The Indian Forest Act is not identified in the schedule of the NGT Act and therefore this court has no jurisdiction to entertain the above application.

2. Without prejudice to what is stated above, the Original Application is beyond limitation. In the said Application, the Applicants have relied upon various complaints made by them with regard to the purported illegality in respect of Sy. No. 175/1 of Camorlim village. The first such complaint dates back to 12/01/2018. Even going by the averments made in the Application, the cause of action if any, therefore arose in the year 2018 and therefore the said Application is barred by limitation. Even if one refers to other complaints dated 29/01/2021, 24/05/2021 and 28/07/2021 made by villagers of Camorlim, the above



Application is barred by limitation under the NGT Act which contemplates a maximum period of 8 months, including delay condonation, for an Application under Section 14. The above Application is grossly delayed and barred by laches. Even otherwise, Conversion Sanad in respect of the said plot was issued on 03/03/2020 which Conversion Sanad was based on the NOC issued by the demarcation committee of Forest Department. Going by the said Conversion Sanad on the basis of which development in the subject property was permitted and which Conversion Sanad proceeded on the premise that the subject property does not qualify as a forest, cause of action at the latest could be made relatable to the date of issuance of Conversion Sanad. Also in the Application, Applicants have relied upon a Report of January 2022 submitted by the demarcation committee of forest department to this Hon'ble court wherein the subject land was not identified as private forest. If the Interim Report of January 2022 is considered even then the Application is grossly barred by limitation. Therefore on all counts



the said Application is barred by limitation. These Respondents rely upon the averments made in the Application and the documents relied upon for the purpose of the said issue.

3. The above Application is filed to circumvent the rigors of the NGT Act. In the said Application, Applicants have placed reliance of the Report of January 2022 by virtue of which it was confirmed that the subject property does not qualify as a private forest. The period of challenge to the said report expired in about September 2022. Applicants are therefore barred by law of limitation to challenge the report. Cognizant to the same, Applicants have couched the reliefs in a way that the report is indirectly challenged which is not permissible under the law. In the event remedy under Section 16 of the NGT Act is rendered untenable in terms of law, the Applicants cannot be permitted to approach this Hon'ble Court indirectly by invoking Section 14.



4. The essential challenges and reliefs claimed and the challenges raised are not tenable in the above application. The Applicants have raised issues pertaining to zoning and Regional Plan 2021 and have made allegations against Town and Country Planning authorities for conversion of zoning in respect to the subject property to settlement zone. Goa Town and Country Planning Act is not a scheduled Act in terms of the NGT Act and therefore the question of entertaining the above application does not arise. The above Application is filed for collateral purposes.

5. The Applicants have not disclosed their locus in respect of the subject property. The Applicants, despite being aware of the approvals granted by the authorities from time to time have chosen to file this Application only around the time the development work was to commence. Considering the conduct of the Applicant and the timing of the above Application, it is clear that the above Application is filed with malafide intent and for collateral purposes.



Without prejudice to the above preliminary objections, Respondents state as under:

6. The issue of identification of private forest in the subject land has been appropriately addressed by the authorities at the time of grant of permissions to these Respondents. The concerned authorities have granted permission after considering all the relevant parameters and therefore there is no foundation for any challenge to the development in the subject property.
7. By Deed of Sale dated 13/11/2017, these Respondents purchased a plot of 7010sq mts. from Sy. No 175/1 of Camorlim Village, Salcete Taluka which plot is hereinunder referred to as the said plot.
8. Since the said plot is part of Sy. No. 175/1, these Respondents partitioned the said plot after following proceedings under Section 61 of the Goa Land Revenue Code. In pursuance to Order passed by the Dy. Collector, the said Plot was partitioned and a separate sub division no 175/1-I of Camorlim Village was given to the said plot. There was no impediment of



whatsoever nature under the Land Revenue Code or otherwise for partition of the said plot.

9. The said plot was zoned as settlement in the applicable Regional Plan and accordingly these Respondents applied before the Collector for conversion of the said property for non-agricultural use. In terms of the procedure applicable for conversion of lands, it is incumbent upon the Collector to refer the file to the Forest Department of Goa on the issue whether the said plot attracts the criteria of private forest as laid down by the state government. In keeping with the said procedure, the application of the Respondents was referred to the demarcation committee of Forest Department and the concerned Forest Department was pleased to issue NOC for conversion of the said plot on the premise that the said plot cannot be termed as private forest. In fact, in the NOC dated 14/01/2019, the concerned Dy. Conservator of Forests had observed that the said plot "may not qualify" the criteria set for identification of private forest. In view of the use of the expression "may not qualify" the concerned dy.



Town Planner sought a specific clarification whether the development can be permitted. In this respect, a specific letter dated 27/08/2019 by the Dy. Conservator of Forest confirming that the said plot "*do not qualify the criteria*". In pursuance to the same, Conversion Sanad dated 03/03/2020 was issued in favour of these Respondents. Annexed hereto and marked as Annexure A-1 (Colly) are the copies of correspondences/letters mentioned above.

10. In pursuance to the grant of Conversion Sanad, these Respondents were granted provisional NOC as per Technical Clearance Order dated 28/01/2020 read with renewal of Technical Clearance Order dated 05/10/2022 for sub division of the said plot. In furtherance to the same the Village Panchayat of Camorlim, Salcete, Goa issued provisional NOC for sub division of the said plot.
11. In January 2022, demarcation committee of Forest Department filed an interim report in respect of identification of private forest in terms of the Araujo

Committee. In the said report it was concluded that the entire Sy. no 175/1 including the said plot does not qualify as a private forest. The said report is consistent with the NOCs issued by the demarcation committee of Forest Department in respect of the said plot and further endorses the fact that the said plot does not attract the criteria of private forest.

12. The said report clinches the issue and there is no scope left for any adjudication in this application. Apart from the other disqualifications, the January 2022 report has not been challenged and cannot be challenged by the Applicants in view of the bar of limitation. On this count itself without any further reference to any other aspect the above Application is liable to be dismissed. Suffice it to say that the other issues in respect of grant of development permission by the TCP, availability and adequacy of the access grant of permission by the panchayat cannot be adjudicated by the Hon'ble Tribunal and this Hon'ble Tribunal has no jurisdiction to entertain the said issues.

13. In the above Application a reference is also made to the Order of the Supreme Court dated 04/02/2015 passed in Civil Appeal Diary 37942/2014. Suffice it to say that the embargo placed by way of the said order is applicable in respect of the said areas having area of more than 1 hectare and canopy density of more than 0.1. In the instant case, the area of the said plot is less than 1 ha and therefore the question of applicability of the said order does not apply. Even otherwise the canopy density parameters of 0.1 are not attracted in respect of the said plot. Respondents shall rely on the true and correct interpretation of the order dated 04/02/2015.

14. Respondents deny that the said plot attracts the criteria of private forests. It is denied that the entire Sy. No. 175/1 attracts the criteria of private forests. These Respondents have not undertaken any tree cutting in the said plot and the images referred to in the application are not in respect of the said plot. Even otherwise these Respondents dispute the authenticity

and efficacy of the said images. Respondents dispute the authenticity and the veracity of the photos attached to the said application. The said photographs do not pertain to the said plot. The applicants are attempting to mislead this Hon'ble tribunal.

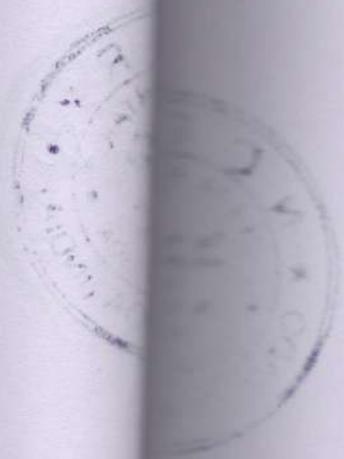
15. Respondents deny that the zone in respect of Sy. No. 175/1 of Camorlim village was wrongly changed to settlement zone in Regional Plan 2021. The concerned authorities followed the necessary procedure under the applicable law whilst granting the change of zoning to settlement zone. It bears mentioning that the change of zoning has not been challenged before any appropriate forum and therefore the said allegation is completely untenable apart from the fact that this Hon'ble tribunal has no jurisdiction to enter into the said issue.
16. Respondents state that the Report of the Araujo Committee was provisional and subject to final on loco demarcation and identification by the demarcation committee of forest department. On the basis of on loco survey identification and demarcation, the

concerned demarcation committee of the Forest Department has concluded that in its Report of January 2022 filed before this Hon'ble Tribunal that Sy. No. 175/1 of Village Camorlim does not attract the criteria of private forest. The Araujo committee report has to be read with the report of January 2022 and cannot be read in isolation.

17. Respondents deny that there has been any illegal cutting of trees in the said plot by these Respondents. The panchnama and the FIR do not relate to the said property. Even otherwise the same by itself does not establish that the said plot satisfies the criteria of private forest.
18. Respondents deny that Sy. No. 175/1 was sub divided without obtaining necessary permissions. These Respondents upon purchase of the said plot, complied with the necessary procedure under the Goa Land Revenue Code to partition the said plot.
19. The complaints filed by the Applicants and/or by the villagers are misconceived and in any case not

relatable to the said plot. There is no illegality undertaken in the said plot and the applicants cannot make generic allegations with regard to the larger property bearing 175/1 and make it conveniently relatable to said plot without any factual basis or documentary substantiation.

20. These Respondents are not parties to PIL Writ Petition No. 45/2018 and are not privy to the orders passed therein.
21. Suffice it to say that the averments in the above application, that the affidavit was filed by the Chief Town Planner before the Hon'ble High Court of Bombay at Goa stating that the permissions granted to Sy No 175/1 shall be kept in abeyance till the Demarcation Committee of Forest Department decides the matter. It bears mentioning that these Respondents were granted permissions on 28/01/2020 and the statement was made in respect of permission granted prior to 20/03/2019 and therefore the order passed in PIL Writ Petition No. 45/2018 and the affidavit dated

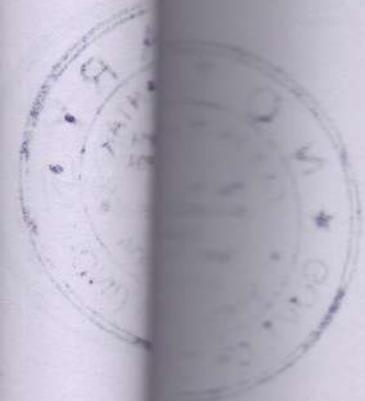


20/03/2019 does not pertain to the said plot. Be that as it may, the affidavit merely states that permissions maybe kept in abeyance till the demarcation committee of forest department decides the issue. In the instant case by NOC dated 14/01/2019, the demarcation committee of forest department had already concluded that the said plot does not satisfy the criteria of private forest, the same was also confirmed by the demarcation committee of the forest department by letter dated 28/01/2022, and further stands endorsed by the report of January 2022 filed by the demarcation committee of forest department. Therefore the orders passed in PIL Writ Petition No. 45/2018 have no bearing in respect of the development in the said plot.

22. The sub division permission has been granted by the authorities after following necessary procedures in terms of law. The complaints made by the villagers are completely misconceived in fact and in law. The illegal tree felling offences as referred to in the above application are not pertaining to the said plot and even

otherwise do not establish the contention sought to be canvassed by the Applicants that the said plot attracts criteria of private forest. These Respondents dispute the authenticity and veracity of the google documents which are not admissible under the law.

23. The grounds raised by the applicants are highly misconceived in law and in fact. Respondents deny that there is any illegal tree cutting in the plot. Respondents deny that the permission granted to the Respondents are illegal and/or they are cases of abuse of power by the authority. Respondents deny that the Supreme Court order dated 04/02/2015 is applicable to the said plot. The panchnama and the forest offences referred to in the grounds and application do not pertain to the said plot and even otherwise have no bearing in the controversy. Respondents deny that the said plot has dense forestation. Respondents deny that the adjoining property satisfies the criteria of private forest. Respondents deny there is any threat to the environment on account of any activity undertaken by the respondents in the said plot.



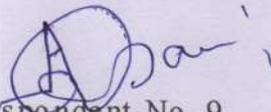
24. Respondents state that the grant of final NOC by the village panchayat has no bearing or relation to the controversy in the above application. The said NOC is not subject matter of challenge before this tribunal and even otherwise challenge to the same is beyond the jurisdiction of this tribunal. The reference to the panchayat NOC is only a ruse set up by the applicants to overcome the rigors of limitation under the NGT Act and to mislead this Hon'ble tribunal.

25. In light of the above, the Original Application No.29/2023 (WZ) is liable to be dismissed with costs.

Date: 26/05/2023

Place: Pune – Maharashtra


Respondent No. 8


Respondent No. 9


Respondent No. 10

Adv for Respondent Nos. 8 to 10

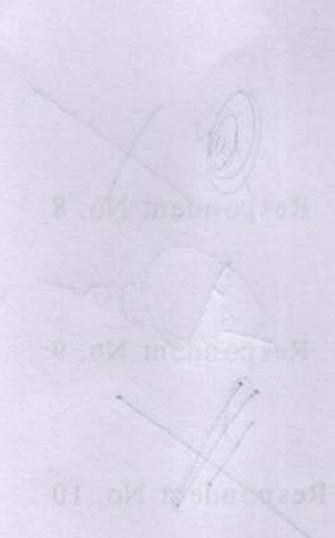




Solemnly affirmed before me by
 Shri/Smt. ①...Damodan Naik
 Who is identified before me by
 Shri/Smt. ②...Amanpath Dersa
 Who is personally known to me
 on this...27 day of...05...2023

Sub
 GEETA P. KANTAK
 NOTARY
 SALCETE TALUKA
 STATE OF GOA (INDIA)
 REG. No.:...4592...2023
 DATE:..27-05..2023

③ Angelo Andrea Rodrigues



BEFORE THE NATIONAL GREEN TRIBUNAL
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Original Application No:29/2023(WZ)

MRS. SYLVIA CARDOZO

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... APPLICANTS

VERSUS

STATE OF GOA & ORS

... RESPONDENTS

AFFIDAVIT

I, **Mr. Damodar Naik**, son of Gajanan Naik, major of age, Indian National, married, business, resident of S-1, Shree Bhumika Apartment, Amrutnagar, Gogol, Margao – Goa the Respondent No. 8 above named, do hereby on solemn affirmation state and submit as under:

1. I say that I am filing the above Reply to the Original Application No. 29/2023(WZ).



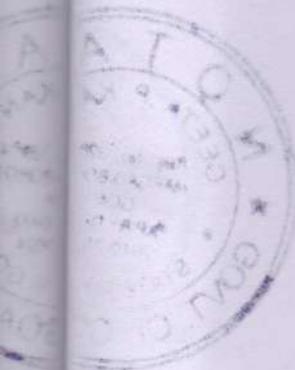
2. I say that the contents of the Reply are true to my knowledge and/or based on legal submissions which I believe to be true.

3. I say that the contents of para 1 and 2 above are true to my knowledge.

Solemnly affirmed at Margao, Goa

On this 26th Day of May, 2023


DEPONENT



Solemnly affirmed before me by
Shri/Smt...Damodan Naik
Who is identified before me by
Shri/Smt.....
Who is personally known to me
on this...27 day of...05...2023

Let
GEETA P. KANTAK
NOTARY
SALCETE TALUKA
STATE OF GOA (INDIA)
REG. No:.....4593-2023
DATE:.....27-05-2023

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

Original Application No.29/2023(WZ)

MRS. SYLVIA CARDOZO

& ORS

... APPLICANTS

VERSUS

STATE OF GOA & ORS

... RESPONDENTS

AFFIDAVIT

I, **Mr. Amarnath Dessai**, son of Govind Dessai, major of age, Indian National, married, business, resident of H. No. 3196, Murida, Agalli, Fatorda, Margao – Goa the Respondent No. 9 above named, do hereby on solemn affirmation state and submit as under:

1. I say that I am filing the above Reply to the Original Application No. 29/2023(WZ).

CA

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

Original Application No.29/2023(WZ)

MRS. SYLVIA CARDOZO

& ORS

... APPLICANTS

VERSUS

STATE OF GOA & ORS

... RESPONDENTS

AFFIDAVIT

I, **Mr. Angelo Andrew Rodrigues**, major of age, Indian National, married, business, resident of H. No. 642/1, Fr. Agnelo Road, Gogol, Margao - Goa the Respondent No. 10 above named, do hereby on solemn affirmation state and submit as under:

1. I say that I am filing the above Reply to the Original Application No. 29/2023(WZ).



Government of Goa
Office of the Dy. Conservator of Forests,
South Goa Division,
Aquem, Margao-Goa, 403 601

Phone/Fax: - 0832-2750246/2751462 E mail: dcfsouth-forest.goa@nic.in

No.5/SGF/CONV/594/18-19/2479

Date: 14/01/2019.
24 Pausa, Saka 1940.

To,
The Dy. Collector (Rev)
✓ South Goa District,
Margao-Goa.

Sub : Conversion of use of land under Sy. No. 175/1-I of Camurlim village in Salcete Taluka.

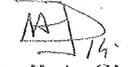
Ref : Letter No. COL/SAL/SG/CONV/118/2018/4668 dtd. 20/12/2018.

Sir,

With reference to the subject cited above and referred letter, it is to inform that, Sy. No. 175 of Camurlim village in Salcete Taluka has been listed as the prospective private forests by the South Goa Forest Division Committee, Margao .

However, as per present status, it is ascertained that the area admeasuring 7010.00 sq. mts., in Sy. No. 175/1-I of Camurlim village in Salcete Taluka may not qualify the criteria set for identification of Private Forests . The said plot is not a Government Forests and does not form part of any compartment of South Goa Division Working Plan. Thus, the FCA. 1980 is not applicable to the said plot. This report is subject to the final demarcation of the Review Committee appointed by Government vide Notification No.7-1-2009/FOR/087 Dtd. 23/4/2018.

Yours faithfully,


(Anil A. Shetgaonkar)
Dy. Conservator of Forests.
South Goa Division,
Margao Goa.

15/01/19
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स्वच्छ भारत नितळ गोंय

Towards Cleaner and Greener India

Goa Forest Department 24 X 7 Helpline No: (North Goa) 0832-2228772 (South Goa) 0832-2750246

Please visit: www.forest.goa.gov.in



Government of Goa
Office of the Dy. Conservator of Forests,
South Goa Division, Aquem, Margao-Goa, 403 601
Phone/Fax: - 0832-2750246/2751462 E mail: dcfsouth-forest.goa@nic.in

No. 5/SGF/CONV/594/2019-20/ (148)

Dated: 27/08/2019.

Sravana, Saka 1941.

To,
The Town & Country Planning Dept.,
Govt. of Goa,
4th floor, Osia Complex,
Margao-Goa.

Sub : Regarding proposed sub-division of land for Damodar Naik & Amarnath Govind Dessai and Agnelo Rodrigues in Sy. No. 175/i-1 of Camurlim village in Salcete Taluka.

Ref : TPM/31571/Cam/175/1-1/2019/4802 dtd. 20/8/2019.

Sir/Madam,

With reference to the above, it is to inform you that the status of the land in respect to forestry point of view is already been mentioned in this office letter No. 5/SGF/CONV/594/18-19/2479 dtd. 14/1/2019. Though Sy. No. 175 is included in list of prospective private forest part of the area which is sub-divided area under Sy. No. 175/1-1 do not qualify the criteria.

Hence, the matter may be decided at your end .

Yours faithfully,


(Anil A. Shetgaonkar)
Dy. Conservator of Forests,
South Goa Division,
Margao-Goa.



RECEIVED
T.C.P.D., MARGAO
DATE

27/08/2019

स्वच्छ भारत निवृत्त गैर

Towards Cleaner and Greener India

Goa Forest Department 24 X 7 Helpline No: (North Goa) 0832-2228772 (South Goa) 0832-2750246

Please visit: www.forest.goa.gov