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

M.A. No. 03 /2023 [WZ]
in O.A. No. 478/2018

BETWEEN:

The Goa Foundation

...APPLICANT

AND

The State of Goa And Others

...RESPONDENTS

Submissions of the Applicant in M.A 3/2023 in O.A 478/2018

1. Two applications are listed for hearing and disposal before this Hon'ble Tribunal: M.A No. 3/2023 and M.A No. 4/2023. They are similar in content to each other. M.A 3/2023 is filed in O.A 478/2018 which was disposed of, but whose directions are not complied with as yet. M.A. No. 3/2023 is designated by the NGT as the lead petition. It will hereinafter be referred to as the 'M.A'.
2. O.A No 478 / 2018 is concerned with identification of private forests in Goa by the two state level Expert Forest Division Committees appointed on 27.11.2012 by the State Govt to identify and demarcate the balance private forests (i.e after the Sawant & Karapurkar committees had concluded their identification). (*Notification appointing the two committees is at pg 28*). The two expert committees were headed by Shri V.T Thomas and Shri F X Araujo for North and South Goa respectively. They will hereinafter be referred to as 'T&A committees'.
3. O.A 478/2018 was disposed of on 12.10.2018 (*pg. 1390*) and a direction issued that the final report of the T&A committees is to be placed before the NGT by March 2019. Extension of time was repeatedly granted in the O.A. Final extension was granted on 27.01.2022. It states that the entire work will be positively completed by 31.03.2022 (*pg. 1432*). **There is no final report as yet.**

4. Instead, a Review Committee (hereinafter 'RC-II') was constituted by the State government on 21.01.2020 to finalise the survey numbers provisionally identified as private forest in Goa by the T&A committees. (*Notification constituting the RC-II is at pg 31*).
5. The RC-II generates 'Interim Reports' from time to time. Till date, 5 Interim Reports have been submitted in these proceedings. The M.A challenges the legality of these 5 interim reports. (*Extracts of the 5 Interim reports at pgs 266 to 1303*). Full reports are submitted by the State Govt in spiral bound volumes.

CAUSE OF ACTION & RELIEF SOUGHT IN THE M.A

6. Applicant's grievances in the M.A are broadly twofold:
 - (i) The exercise carried out by the RC-II as per the 5 Interim Reports is not in accordance with its TOR; further, the methodology adopted has adverse consequences on the identification of private forests in Goa as directed by the Supreme Court in its order dated 12.12.1996 in *Godavarman [pg. 1316]*.
 - (ii) Even while the matter is under consideration by the NGT, the State Govt is granting permissions for development based on these Interim Reports.
7. **Applicant's prayers** broadly are as follows (*pg 23*):
 - (i) The 5 interim reports be quashed and set aside;
 - (ii) Until the final report of the T&A committees is produced before, and duly approved by the NGT (as was the earlier final report on the S&K committees), the State Govt should be restrained from granting development permissions (i.e., diversion to non-forest use) on the Sy nos. both provisionally identified as well as those which are finally demarcated as forest in the T&A committee reports.

FACTS OF THE CASE:

8. Pursuant to the order dated 12.12.1996 in *Godavarman* [pg. 1316], the State Govt appointed the Sawant and Karapurkar committees (S&K) to identify private forests in Goa. The sy nos identified were demarcated by the Forest Dept and the S&K reports were subsequently reviewed and finalised by the Deepshikha Committee (Review Committee-I). The finalised report identifying and demarcating 46.11 sq kms was approved by the NGT in OA 479/2018 on 18.08.2020 (pg 1396) and the Sy nos are notified in the Gazette. A challenge to the NGT order was rejected by the Hon'ble Supreme Court on 01.02.2021 (pg. 1424). This OA is concluded.

9. The present M.A is concerned with O.A 478/2018 only. The T&A committees comprised experienced, retired, senior forest officers. The T&A committees spent 5 ½ years locating areas which they first provisionally identified as private forests. Some of these areas were thereafter physically visited and with the help of staff from the Land Survey dept., the forest portions were demarcated on the ground with pegs. Such demarcated areas were recorded as 'Finalised' in the reports of the T&A committees. The work of the two committees is in accordance with the TOR assigned to them. On 23.04.2018, the T&A committees were abruptly disbanded (*Notification is at pg 30*). The T&A committees subsequently submitted their individual reports by December 2018. (pgs 47-201). The T&A committees had together finalised 8.64 sq km of private forest, besides provisionally identifying other areas for consideration as private forest.

10. Vide the same notification dated 23.04.2018 disbanding the T&A committees, the State govt appointed a review committee (RC-I) headed by Smt Deepshikha Sharma to review the reports of all four expert committees: Sawant, Karapurkar, Thomas & Araujo, in order to bring uniformity to the identification of private forests in Goa. As the reports of the T&A committees were yet to be submitted, the RC-I began first reviewing the S&K reports and submitted its report to NGT which was approved on 18.08.2020 (pg. 1396).

11. After the term of the RC-I ended, the State govt, on 21.01.2020, appointed a second review committee (RC-II) to examine only the provisional survey numbers listed in the T&A reports and submit its report by 10.03.2020 (pg. 31).
12. In its 3rd meeting held on 10.02.2020, the RC-II estimated that approximately 32 sq. km of provisional sy nos had to be finalised and that 11 months would be required to complete the work (pg. 4602).
13. To assist the RC-II, the State Govt appointed 16 inspection teams on 18.09.2020 - each team comprising an officer of the Land Survey Dept, an RFO from the Forest Dept and a talathi (pg. 32). The team had to delineate the private forest boundary on the ground and give a hearing to the land owner.
14. The RC-II has till date produced 5 Interim reports, commencing in 2021. Soft copies of the first 3 Interim Reports were given to the Applicant at end of November 2021 and this is recorded in the NGT's order dated 30.11.2021 in E.A 21/2021 in O.A 478/2018 (pg. 1428). In January 2022, a 4th interim report was submitted. On 27.01.2022, the NGT directed 31.03.2022 as the final date for submission of the T&A final report (pg. 1432). However, on 04.04.2022, a 5th Interim Report was produced.
15. Alarmed that the State Government had already proceeded to act on the Interim Reports even while the matter was before the NGT and the final report was not yet approved, the applicant filed O.A. No 63/2022 on 06.04.2022. The NGT directed that it be filed afresh as an M.A and was numbered as M.A 4/2023. However, the original O.A. 63/2022 was re-numbered as M.A No. 3/2023 in the O.A. No. 478/2018 and contains all the responses. M.A No. 3/2023 is therefore designated as the lead Petition by the Hon'ble Tribunal.

16. Two important statements in the reports prompted the applicant to file this MA:
- i) The 1st Interim Report records that the area to be examined is 91.83 sq km. (*pg. 266*). This is far greater than the initial assessment of the RC-II that the provisional area to be finalised is approx 32 sq km only (*pg. 4604*). Applicant was alarmed that the RC-II was doing more than reviewing the provisional sy nos in the T&A reports. Applicant's perusal of the data in the reports confirms that a fresh exercise of identification is being carried out, which is why it is taking years to complete, with no end in sight.
 - ii) The 4th interim report, received by the Applicant in January 2022, informed, for the first time, that the State Govt had accepted the earlier three reports. Investigations by the Applicant showed that not only were the reports accepted, but approvals were being granted on some of the Sy Nos supposedly 'cleared' by the RC-II.
17. There is no final report yet – although more than 5 years have passed since the T&A committees submitted their reports and more than 3 years have passed since the RC-II was appointed to finalise the T&A reports.
18. The 5th Interim Report records that the RC-II has finalised only 3.28 sq km (328 hectares) of private forest (*pg 1279*) out of the 91.83 sq. km of land which it decided to examine. The 91.83 sq km are stated to comprise 3195 survey nos and the RC-II has examined only 1630 sy nos in the three years that it has been functioning [*see table at pg. 273*]. There is thus still a long way to go.

SUMMARY OF GROUNDS:

19. The M.A. raises 4 grounds in support of its prayers for rejection of the Interim Reports and for a restraint to be imposed on the Government from granting any further development permissions until the T&A reports are approved by the NGT. There is also a prayer for sy nos that were finalised by the two committees to be included in the T&A final report.

- (I) The first major objection to the Interim Reports is that the RC II has functioned as a new committee rather than a Review Committee. It has examined only some of the Sy. nos. listed in the T&A reports. It has further rejected many others without physically verifying the forest cover on them. Among the Sy. nos. rejected are both final and provisional sy nos. At the same time, the RC-II has added several new Sy. nos. to be examined which were not listed in the T&A reports. Thus, it has neither properly reviewed the work of the T&A committees, nor restricted itself to the T&A committee reports only. Instead, it has gone beyond the Sy. nos. listed in the T&A reports and is therefore not a review committee.
- (II) The second objection to the Interim Reports is that the RC-II has exceeded the TOR of its appointment. As per the TOR, the RC-II was required to examine only the provisional sy nos in the T&A reports. Instead, the RC-II has also examined finalized areas, which were specifically kept out of its TOR, and in fact rejected several of them.
- (III) The third objection of the applicant to the Interim Reports is to the methodology followed by the RC II wherein it summarily excluded areas from being considered for private forestry status solely on the basis of Forest Survey of India (FSI) maps. The FSI had been requested by the State Govt to supply maps of areas which fitted into the State Govt's criteria for identification of private forests. (However, the FSI maps could supply only areas that met 2 criteria: 5 ha., minimum, & 40% canopy density). The third criteria, namely 75% forestry species required ground truthing. The RC-II superimposed its digitized maps of the T&A reports on the FSI maps. Sy nos listed in the T&A reports (which were either provisionally identified or finalised after ground truthing), but which did not fit into the FSI maps,

were summarily excluded from the RC's list of Sy Nos to be reviewed without ground inspection. This has led to unwarranted and unjustified large-scale exclusion of both provisional and final Sy. Nos listed in the T&A reports, without physical verification.

- (IV) The fourth ground raised in the M.A is to the Government's decision to commence granting approvals for development based on its acceptance of the piecemeal reports submitted to it by the RC-II. The statement that the Government has accepted the previous three reports was made for the first time in the 4th report. No specific decision is brought on record in the M.A. The applicant is not aware whether there is any decision of the Government to allow development on areas that have been excluded by the RC-II. However, the applicant subsequently became aware that development permissions have been granted on some Sy Nos which were listed in the T&A reports, but have been excluded by the RC-II even without a site visit. These sy. nos include both finalized and provisional sy nos. Applicant's case is that without a final report being produced by the RC-II (*as was done by the RC-I, whose final S&K report was approved by the NGT in its judgement dt. 18.08.2020*), no development permission ought to be granted by the State Govt for Sy. Nos listed as provisional or final in the T&A reports.

20. **JUSTIFICATION FOR EACH GROUND:****Ground I) RC-II has functioned as a new committee rather than a review committee.**

- a) At the outset it must be noted that the T&A reports had indicated both final and well as provisional identified areas. (*Thomas Report - pg 47; Araujo report - pg 65*). The finalized private forest areas listed in the T&A reports are a total of 8.64 sq. kms: 3.26 sq kms by the Thomas Committee; and 5.38 sq. kms by the Araujo Committee. (*see table at pg 8*). These sy nos comprising 8.64 sq kms were not to be reviewed by the RC-II as per its TOR.
- b) The minutes of the 3rd meeting of the RC-II record that the T&A committees had provisionally identified approx. 32 sq. kms as private forest (*pg 4602*). The minutes also record that a period of 11 months is required for this exercise. However, the 1st interim report astonishingly states that a total of 91.83 sq. kms will be considered by the RC II. There is a huge discrepancy between the two figures which is unexplained, and it clearly indicates that the RC-II has considered areas beyond the sy. nos in the T&A reports. The RC-II was not called upon to do this. The Deepshikha Committee (RC-I), for instance, had scrupulously avoided going beyond its mandate.

Ground II) The RC II has deviated from its TOR and re-examined and reviewed Final Sy Nos in the T&A committee reports which it was not called upon to do.

- a) As per the TOR, the RC was required to examine only those areas provisionally identified by the T&A committees as private forest, and not the areas which had been finalized i.e., areas demarcated by these two committees after site visit along with DSLR officers and physical verification on the ground. (*TORs - pg 31*). Such distinction of provisional and final sy. nos has been made in both committee reports. The Thomas committee finalized 326.51 hectares i.e 3.26 sq. kms. (*pg 58*). The Araujo committee finalized 538.65 hectares i.e 5.38 sq. kms (*pg. 109*). Thus, a total of 8.64 sq. kms were finalized by the T&A committees. All this area would automatically get protection under the provisions of the FCA, 1980.
- b) The 5th interim report of the RC-II informs that it has finalized a total of 3.28 sq. kms only (*pg. 1279*). It is clear from the progressive reporting made in the 5 Interim reports, that areas finalised by the T&A committees are reviewed by the RC-II, which it is not empowered to do.
- c) Some of the areas finalized by the T&A committees were pursuant to specific orders of the NGT in O.As which had earlier been filed. Two examples are provided: Salvador do Mundo, in North Goa (*pgs. 57 and 352*), And DLF in South Goa (*pgs 125, 150 and 354*). Those proceedings have resulted in orders that are final and therefore cannot be reviewed unless there is an order from the Hon'ble Apex Court.
- d) The State govt's affidavit discloses that it is the RC-II alone which decided to re-examine the finalized sy nos in the T&A reports. At para 11 of the affidavit, it is stated as follows: "Thus, in its 9th meeting, the RC-II discussed and deliberated in detail for areas whose demarcation and plan are finalized by T&A committees and unanimously agreed that all such survey numbers will be reviewed

by the committee through field verification and final decision shall be taken as per field reports.” Thus, it is clear that the RC-II deliberately and consciously decided to violate the TOR by which it was appointed, and re-examine final sy nos as well. (*Govt affidavit - pg 4443*)

e) The Applicant lists below, by way of illustration only, some Sy. Nos identified, demarcated, and finalized in the T & A Committee Reports, but deleted by the RC-II:

Village	Sy. Nos	Finally demarcated Private Forest		Deleted by Review Committee
		Thomas Committee	Araujo Committee	2 nd Interim Report
Salvador Do Mundo	66/1(p), 66/2, 66/2-A, 66/3, 66/4(p), 66/5(p), 66/6-9, 66/12(p),66/14	Pg. 57		Pg 352
Salvador Do Mundo	322/3(p), 322/4(p), 322/6, 322/7, 324/1(p),340/1-10	Pg. 57		Pg 352
Salvador Do Mundo	355/1-11, 356/1-9	Pg. 57		Pg 353
Tiracol	14/1(P), 15/1(P), 15/1-A (P)	Pg. 58		Pg 354
Arambol	185/1(P), 186/1 (P)	Pg. 58		Pg 354
Paliem	154/1(P), 155/1(P), 155/3(P), 155/4(P)	Pg. 58		Pg 354

Village	Sy. No.s	Finally demarcated Private Forest		Deleted by Review Committee
		Thomas Committee	Araujo Committee	
Cortalim	101/1, 101/2, 102/3-B, 102/4, 102/6, 102/6-A – 6/-C, 102/9, 120/1-6, 120/10-11, 126/1, 127/1, 129/1		Pgs. 112-113	Pg. 355
Sancoale	13/1 - 4, 14/1 - 7, 25/1 - 9, 26/ 1 -11		Pgs. 115-116	Pg. 357
Dabolim	43, 43/1-A		Pg. 125	Pg. 354
Dabolim	30/1-A – 1/-F, 36/1, 39/1		Pg. 127	Pg. 355
Dabolim	4/1, 9/3, 9/3-C, 9/4, 9/5, 9/5-D, 13/1, 13/3, 13/4-C-1 – 13/4-C-7, 46/1		Pg. 128	Pg. 355

- f) Applicant draws a similarity with the situation in 2000, when the Karapurkar Committee commenced reviewing its predecessor's report. The Supreme Court disallowed the review of the Sawant committee's report by the second committee (pg. 1324). The Karapurkar Committee then identified additional areas only and did not interfere with the Sawant committee's work.

g) There is a clear distinction in the TOR of the two review committees which must be noted. The TOR of RC-I was to review the entirety of the four committee reports. Even then, the RC-I accepted the finalized sy nos approved by the Forest Dept and restricted its examination only to the disputed balance areas. Eventually it managed to complete a review of the S&K reports only. In the case of the RC-II, its TOR was restricted to review the provisional Sy nos of the T&A committees only. Hence a short time frame was granted of less than two months. However, although the RC-II was given only a restricted mandate, it decided to review the final sy nos of the T&A reports as well which naturally has delayed the completion of the entire project. Hence, it is imperative that, irrespective of whether the Hon'ble NGT decides to set aside the Interim Reports or not, the Hon'ble NGT ought to at least direct that all the sy. nos finalized by the T&A committees, comprising a total of 8.64 sq. kms, are included in the RC-II's final T&A report of private forests in Goa.

Ground III) Challenge to methodology adopted by RC-II

- a) The methodology adopted by RC-II as noted in the 1st Interim Report (pg 266 @ 270 - 281) is detailed below:
- i. It obtained FSI maps which conformed to the State Govt's criteria.
 - ii. It issued advertisements inviting objections / representations from affected private forest owners of lands (It received 8062 responses).
 - iii. It digitized the T&A maps.
 - iv. It imposed the digitised T&A maps on the FSI maps.
 - v. It deleted all the sy nos which did not fit into the FSI maps.
 - vi. For qualifying Sy. No.s, it delegated the task of ground verification to the 16 teams which were appointed by the State Govt for the purpose. These teams comprised a Talathi, the Land Survey officer and RFO.
 - vii. It carried out 5% verification of tree count during the site visit.
 - viii. It heard only objectors whose area qualified all the criteria.
 - ix. If parties objected, it carried out 100% tree count.
 - x. It submitted the interim report to the Government with the status as indicated in the annexures. (The annexures list the Sy Nos not qualifying as private forest – apart from details of various proformas used during the exercise)
- b) **The applicant challenges only one aspect of the methodology followed by the RC-II and that is the exclusion of sy nos listed in the T&A reports based solely on the fact that the areas are not shown as 'areas meeting the State criteria' in the FSI maps (*Step v above*).**
- c) The FSI report itself states at 7.5 of the document titled 'Forest Cover Mapping of Goa' that: "The accuracy of this classification could not be ensured as the ground truthing could not be carried out due to ongoing

travel restrictions all over the country (Covid 19). But the accuracy was assessed on sub-meter Google imageries on high scale and temporal data.”
 [FSI Report - pg 203, @ pg. 219].

- d) The FSI itself thus admits that its reports are not based on ground truthing. On the other hand, the T&A committees headed by seasoned foresters finalized certain sy nos based on ground truthing. Ground truthing is definitely a superior exercise to scanning areas only via Google imagery, however refined the scale of imagery may be.
- e) To appreciate why final sy nos of the two reports ought not to have been summarily disregarded by the RC-II, applicant refers to the methodology adopted by the T&A committees (as stated in their reports) and as prescribed in the notification appointing them. The stages are listed in detail in the reports of the Thomas Committee (pg 47, @ 49-50) and Araujo Committee (pg 65, @ 73-77 & 88-89). They are briefly stated below:
- i. Ocular estimation for locating prospective / potential forests. Advertisement was issued in the papers asking the public to assist in locating forest patches.
 - ii. Meeting of stakeholders to inform the public about its work.
 - iii. The committee physically visited areas where it had information about patches of private forests existing and observed that criteria were met.
 - iv. Physical verification of qualifying forest patches along with land surveyors, to enable landowners to know the extent of forest identified on their plots. Boundaries were marked using wooden pegs or iron nails, paint marks or boundaries of trees.
 - v. The geographical areas satisfying the criteria were surveyed and plotted on the map by the DSLR staff.
 - vi. The survey of the demarcation was done using the Total Station method.

- vii. The committee then conducted a review where it scrutinised the plan/map to check for discrepancies.
- viii. These survey numbers (considered as finalized by the Committee) were forwarded to the DCF (Working Plan) along with plan/map for final demarcation with stones. Another set was sent to the Dy Collector for incorporating in the Revenue records. A report was furnished to the PCCF. The Committee records in its report that the finalised plans have been forwarded to the office of the Dy Collector for necessary action. [*Thomas Report - pg.50; Araujo Report - pg 89*]
- f) Applicant submits that when such a detailed exercise was carried out to declare certain sy nos as finalised, it was wrong on the part of the RC-II to decide to exclude these areas for one reason or another.
- g) The State Govt in its affidavit has submitted that the T&A committees only ocularly survey the private forest areas. However, this is totally incorrect as perusal of the reports reveal that provisional sy nos were ocularly surveyed and also visited, but finalised sy nos were subjected to further survey, site visit along with DSLR officers and demarcation. At any rate, both the Committees gave exact details of the areas finalised.
- h) Hence the exclusion of sy nos, more particularly final sy nos based only on the FSI maps is totally unwarranted. The methodology adopted by the RC-II is thus flawed and would lead to violation of the Hon'ble Supreme Court's directions on identification of forests.

Ground IV) Government has approved development / non-forest use of sy nos excluded by the RC-II without the approval of the NGT

- a) The appointment of the T&A committees was pursuant to High Court orders in P.I.L. W.P. 334/2006 filed by this applicant. The application was transferred to the NGT vide order dated 17.10.2013 (pg. 1342). Thereafter, being seized of the matter entrusted to it by the High Court, the NGT monitored the work of the committees.
- b) When the NGT first disposed of the matter on 30.07.2014, it gave the Govt 8 weeks to complete the exercise of identification of balance areas since the Committees were in existence since 2012 (pg 1346). Thereafter, the matter was taken up by the Northern Bench (*renumbered as OA 478/2018*), and disposed of for the second time on 12.10 2018 directing the State Govt to produce the final report of the T&A committee before the NGT by March 2019, with a copy to the applicant (pg. 1390). It is thus clear that the Hon'ble NGT has constantly taken steps to ensure that the final report of the T&A committee is placed before it.
- c) The T&A committees produced their reports by December 2018. They were never placed before the NGT although the notification disbanding them had stated that their work was complete.
- d) The State Govt thereafter appointed the RC-II to finalise the T&A committee reports and informed the NGT accordingly while seeking time to complete the exercise. Time was repeatedly granted. However at no stage did the State Govt apprise the NGT that it was granting approvals for development on sy nos excluded in the reports, even though they were Interim Reports only.
- e) Without scrutiny of the NGT and approval of the final report, the State Govt also violated the Supreme Court's order in *Godavarman* which restrains the State from permitting non-forest activities on areas which are identified as forest lands without forest clearance. In this case,

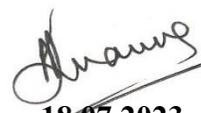
certain areas had been finalized by the Expert Committees who were appointed pursuant to the Supreme Court direction in *Godavarman*. Permitting development on such survey numbers without scrutiny by a court/this tribunal would violate the Hon'ble Supreme Court's directions.

- f) Further, the NGT had approved the previous RC-I finalization of the Sawant and Karapurkar reports [*judgement dt. 18.08.2020*]. The Supreme Court had upheld the NGT's final order [*pg. 1424*]. Parties who objected to inclusion of their owned plots in the NGT approved report have been directed to maintain status quo until their challenge is examined. Hence, no Sy. Nos which were finalized by the T&A committees could not be permitted for development / non-forest use.
- g) Lastly, the State Govt now states in its affidavit that it has not accepted the T&A reports. (*Affidavit - pg 4443 @ pg 4460 - para 17*). This averment is blatantly false. At best, it is an afterthought, to try and justify the erroneous path followed by the RC-II. This is apparent from the following two facts:
- i. There is no order produced which records that the T&A reports are rejected by the Govt.
 - ii. The RC-II was appointed precisely to review the T&A reports. If the T&A reports were themselves not accepted, where is the question of having a review committee to review those two reports?
- h) In other words, the State Govt's stand clearly gives credence to the Applicant's averment that the so-called Review Committee appointed vide Notification dated 21.01.2020 (*pg 29*) is not functioning in terms of its TOR but as an entirely new Committee, whose TOR is not even known. The NGT has been completely misled on the nature of work and methodology of the RC-II. What has been placed by the RC-II before the NGT in the form of 5 so-called interim reports do not constitute a Review, but in fact constitute a fresh exercise to conduct

identification and finalization of the balance area of private forests in the state of Goa which the RC was neither called upon nor authorized to do.

21. For the aforesaid reasons the Applicant prays that this Hon'ble Tribunal considers this application favourably and grants the reliefs prayed for and any other reliefs deemed appropriate in the facts and circumstances of this case.

**18th July 2023,
Mapusa, Goa**



18.07.2023

Ms Norma Alvares with Mr Om D'Costa
Advocates for the Applicant