

1485

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

ORIGINAL APPLICATION NO. 170 OF 2024

[PREVIOUSLY ORIGINAL APPLICATION NO. 26(THC)/2013(WZ)]

IN THE MATTER OF:

Goa Foundation

...Original Applicant

Versus

DLF Homes Goa Pvt. Ltd. & Ors.

...Original Respondents

(Earlier known as M/s Sarawati Builders & Construction Pvt. Ltd.)

INDEX

S. No.	Particulars	Pg. No.
1.	Written Submissions on behalf of the Respondent No. 1	1-13

FILED BY:

Abhishek

**FOR KARANJAWALA & CO.
ADVOCATES FOR DLF HOMES GOA PVT. LTD.
7 FACTORY ROAD
NEAR SAFDARJUNG HOSPITAL
NEW DELHI 110 029**

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

ORIGINAL APPLICATION NO. 170 OF 2024

[PREVIOUSLY ORIGINAL APPLICATION NO. 26(THC)/2013(WZ)]

IN THE MATTER OF:

Goa Foundation

...Original Applicant

Versus

DLF Homes Goa Pvt. Ltd. & Ors.

...Original Respondents

(Earlier known as M/s Sarawati Builders & Construction Pvt. Ltd.)

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

1. The present written submission is being filed on behalf of the Respondent No. 1, DLF Homes Goa Pvt. Ltd., following the arguments heard by this Hon'ble Tribunal in the present matter on 11.02.2025
2. The only issue to be determined in the present OA is whether the land under Survey No. 43 in village Dabolim, Mormugao, Goa, belonging to the Respondents, including Respondent No. 1 is a private forest or not.
3. It is humbly submitted that the aforesaid issue is no longer open or *res integra*.
4. This is in view of the fact that the Review Committee-II ("RC-II") in its 2nd Part Final Report dated 10.06.2021 has specifically noted that the entire

Survey No. 43 in Dabolim, Mormugao does not meet the criteria of private forest. (**Pages 856 to 907, Relevant Page 874, Item No. 88**).

5. After the 6th Part Final Report of RC-II, the State of Goa, issued a gazette notification date 10.08.2023 (**Pages 936 to 938**), formally notifying the survey number identified as private forest by the RC-II in the State of Goa. Admittedly, the Survey No. 43, Dabolim, Mormugao is not part of the said notification. *It may be noted that this notification dated 10.08.2023 has not been challenged till date, and the limitation for challenging the same under section 14 of the National Green Tribunal Act, 2010 has also expired. Therefore, this notification has attained finality.*
6. Most importantly, this Hon'ble Tribunal vide its judgement dated 12.09.2023 passed in MA/3/2023 in OA/478/2022 (**Pages 944 to 993**), after the 6th Part Final Report of RC-II and gazette notification dated 10.08.2023, has specially repelled all challenges of the present Applicant (Goa Foundation), to the composition, scope and methodology of RC-II. The principal argument of the present Applicant that the methodology followed by the earlier Thomas and Araujo Committees ("**T&A Committees**"), which had held the land of the Respondent No.1 to be a private forest, was the correct methodology as compared to the methodology followed by RC-II, was specifically rejected by this Hon'ble Tribunal. This Hon'ble Tribunal also rejected the contention of the Applicant herein that the scope of RC-II did not include those survey

number which had been finally identified as private forest by the T&A Committees. This Hon'ble Tribunal, agreed with the submission of the State of Goa based on the premise that since the final report of the T&A Committees was submitted after almost 8 months after it had been disbanded, the said report was never accepted by the State Government, thus rendering all the survey numbers provisionally or finally identified as private forest therein only as provisional, and therefore, within the scope of review of RC-II.

For the convenience of reference, para 77 of the aforesaid judgement containing the finding regarding the scope of RC-II and para 89 of the judgement containing the finding regarding the methodology followed by RC-II are extracted hereunder:

“77. One more aspect has been asserted by the learned senior counsel for respondent Nos.1 to 3 that the reports of the T&A Committees were never accepted by the Government. Therefore, to say that they should be presumed to have accepted that an area of 3.26 sq.kms. and 5.38 sq.kms. should be treated to have been finally identified and demarcated as private forest area, would be incorrect. The Government was of the view that the said area entirely was to be reviewed by RC-II in the backdrop of various grievances having been received. The learned counsel for the applicant hammered the point that there is no order on record

placed by respondent Nos.1 to 3 in support of their case that these reports were rejected/not accepted by the Government. But in this case, we are of the view that respondent Nos.1 to 3, which included the Government of Goa, when submit an affidavit and says something on oath, unless there is something shown contrary, the averment made in the said affidavit to the effect that the reports of the said Committees were not accepted, cannot be disbelieved. Therefore, review of the entire area i.e. 3.26 sq.kms and 5.38 sq.kms., which had been identified as private forest by the T&A Committees, was also within the domain of RCII along with other areas which were said to be provisionally identified by these Committees. Hence, we find that RC-II has not exceeded its mandate by undertaking review of the forest areas finalized by Thomas and Araujo Committees. Issue No. (ii) is decided accordingly.

89. Having stated the methodology adopted by the T&A Committees and the RC-II Committee, we find that the methodology adopted by RC-II is a scientific methodology in keeping with the developments in the field of Forest Cover Map. Besides that, we find that it involves physical verification as well. Therefore, in our estimation, the methodology adopted by RC-II is scientific one and the demarcation of the private forest area done/being

done by it is found to be appropriate. Thus, we decide issue Nos.(iii) and (iv) accordingly.”

7. Subsequently, the criteria for identification of forest based on three parameters, followed in the State of Goa, which is the basis of methodology adopted by RC-II, has also been held to adequate and valid by the Hon’ble Supreme Court vide its judgement dated 24.01.2024 in the matter of ***Goa Foundation vs State of Goa***, Civil Appeal No. 12234 of 2018 (**Pages No. 1127 to 1173**). The three parameters followed by RC-II, set out in para 33 of the judgement of this Hon’ble Tribunal dated 12.09.2023 is same as the parameters noted by the Hon’ble Supreme Court for the State of Goa in para 71 of its judgement. The specific finding of the Hon’ble Supreme Court on the criteria, is set out in para 71.1-71.3 of the judgement, which is set out hereunder for ready reference:

“71.1. Firstly, the existing criteria for identification of private forests In the State of Goa are adequate and valid, hence, they require no alteration. The Ministry of Environment, Forest & Climate Change Guidelines, as well as the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, are clear and unambiguous, as they have exempted the application of the Forest (Conservation) Act, 1980, on areas that are less than 1 ha and where not more than 75 trees have to be cut. Reference can be made to the communication dated 3-1-

2005 of MoEF. Further, it can be noticed if the criteria i.e. the canopy density of 0.4 and minimum area of 5 ha is reduced to 0.1 and 1 ha as contended, respectively, it will result in the plantations of coconut, orchards, bamboo, palm, supari, cashew, etc. grown by farmers on their private lands into the category of "private forest". The effect would be that even for a minor development on the land concerned, the permission of the Government under the FCA, 1980, for the landholders, would become indispensable. It would be of necessity to note that none of the States have adopted the criteria proposed by the appellant, namely, the 0.1 density criteria, as it would result in opening a Pandora's box, and it would result in all the States undertaking the task of reassessing the forest area all over again which has since been settled on the basis of existing criteria.

71.2. Secondly, it has been noticed that the appellant is attempting to take a contrary stand on the issue of criteria for the identification of forests, namely, suggesting a change in criteria for the identification of deemed forests under private ownership. On the one hand, the appellant is challenging the criteria adopted by the Sawant and Karapurkar Committees for the identification of inter alia private forests and on the other hand has relied on the same criteria adopted by these two committees

*for the identification of forests, including private forests, before the Tribunal, as has been observed by the Tribunal in its judgment rendered in OA No. 22 of 2013 on 22-1-201522 in the matter of Goa Foundation v. Union of India and others and in OA No. 479 of 2018 in Goa Foundation v. State of Goa²⁴. **Thus, the appellant cannot be permitted to approbate and reprobate.** The appellant has also failed in its endeavour to have the second interim report of the Sawant Committee and the criteria laid down thereunder to be revisited in Tata Housing and before the Tribunal in Nisarga. In fact, the appellant and another NGO had argued before the Tribunal in Nisarga that the criteria ought to be 10% canopy density, which did not find favour with the Tribunal in the teeth of Tata Housing, and said order passed in Nisarga has attained finality.*

71.3. Thirdly, this Court vide its order dated 12-12-1996 had expressly delegated the task of identifying forest areas to Expert Committees to be constituted by the State Governments, thereby recognising that there can be no uniform criteria for such identification across the country.”

8. In a recent judgement dated 19.03.2024 (reported in 2024 SCC OnLine NGT 214), in a different OA filed by the present Applicant (Goa Foundation), this Hon’ble Tribunal had again reiterated, relied upon and

re-affirmed its finding in the earlier judgement dated 12.09.2023 regarding the findings of the RC-II and has also relied upon the aforesaid judgement dated 24.01.2024 of the Hon'ble Supreme Court. This judgement was specifically in relation to the 2nd Part Final Report of RC-II which also covers the land in Sy. No. 43, Dabolim, Mormugao, where the land of the Respondent No. 1 is situated. For convenience of reference, para 29 and 30 of the judgement are extracted hereunder:

*“29. Based on above, we find that the Hon'ble Supreme Court has upheld the methodology adopted for identifying the private forests by RC-II which also involved use of satellite imagery and ground truthing. **Therefore, argument of the learned counsel for the applicant that the physical verification must be made of the site in question in order to determine whether the same qualifies for the forest or not, does not appear to be justified because RC-II has adopted scientific methodology to arrive on the said decision, which is based on Satellite Imagery. We find that physical verification has also been done in sample cases.***

*30. We are convinced by the argument of learned counsel for respondent Nos. 6 and 7 that the present application appears to be not maintainable **in view of our decision in M.A. No. 3/2023, in which we have already considered the second interim report***

wherein present survey numbers were also involved and the same has been upheld by us.”

9. In view of the above, the reliance placed by the Applicant on the T&A Committee Report, post it getting disbanded, or on any earlier reports or affidavits of any of the authorities is completely misconceived and irrelevant. Notably, the Hon’ble High Court *vide* its order dated 08.09.2023 has already disposed of the Writ Petition No. 379 of 2014, which sought to set aside the findings of Araujo Committee Report, in view of the submissions made by the Applicant, Respondent No. 1 and the State of Goa that the 2nd Part Final Report declared the Survey No. 43 as not meeting the criteria of forest. After the State having accepted the findings, this Hon’ble Tribunal has further judicially stamped the correctness, methodology and scope of RC-II *vide* its judgement dated 12.09.2023. Therefore, it is apposite to state that RC-II is the final word on the issue of private forest, and it has held that the land of Respondent No. 1 as not qualifying as a private forest in terms of the three parameters/criteria. In fact, this has been admitted by the Applicant also in para 28 of its Rejoinder Affidavit filed on 11.11.2024.
10. The only other issue raised was in relation to para 91 of the judgement dated 12.09.2023, which was sought to be mis-interpreted by the Applicant to mean that the RC-II was required to physically re-ascertain whether the

land in question of the Respondent No. 1 was a private forest or not. This interpretation of the para 91, is ex-facie erroneous from the following”

- i. This Hon’ble Tribunal has specifically upheld the scope of RC-II to review all survey numbers identified as private forest by T&A Committee, even including those which were finalised by its report submitted 8 months after it had been disbanded. The three parameter criteria, followed by RC-II has also been upheld both by this Hon’ble Tribunal in the said judgement and the subsequent judgement dated 24.01.2024 passed by the Hon’ble Supreme Court. As per these criteria, even if one of the three parameters is not satisfied, the land cannot be identified as a private forest. The methodology followed by RC-II in respect of the said three parameters has specifically been upheld as scientific and involving physical verification in para 89 of the judgement of this Hon’ble Tribunal. In para 89, this Hon’ble Tribunal has also specifically held that the demarcation of private forest done by RC-II was “found to be appropriate”.
- ii. The directions in the para 91 have to be read and understood in harmony with the aforesaid reasoned and detailed findings in the judgement. Further, having upheld the methodology wherein non-meeting of even one of the three parameters is sufficient to exclude a land from being identified as private forest, the judgement cannot

be negated on the basis that even if one of the parameters is not met, still the other parameters would have to be physically verified.

- iii. Even the Hon'ble Supreme Court in its judgement dated 24.01.2024, in para 71.1 has specifically warned that accepting the criteria suggested by the Applicant herein, (Goa Foundation) "would result in all States undertaking the task of re-assessing the forest area all over again which has since been settled on the basis of existing criteria." In para 71.2 the Hon'ble Supreme Court has also held that in relation to the criteria the Goa Foundation has been taking contrary stands and cannot be permitted to approbate and reprobate. Therefore, any interpretation of para 91 which would result in re-opening or re-assessing the task of identifying forest area would also be contrary to the letter and spirit of the judgement of the Hon'ble Supreme Court. The Hon'ble Supreme Court, conscious of the progress made in identification process by the State, chose to be extremely cautious to the keep the criteria for identification of private forest intact and acknowledging that the consequences of disturbing the otherwise adequate criteria would be equal to opening a Pandora's box. The relevant part of para 71.1 of the judgement dated 24.01.2024 is being reproduced for reference.

"71.1.....The effect would be that even for a minor development on the land concerned, the permission of the Government under

*the FCA, 1980, for the landholders, would become indispensable. It would be of necessity to note that none of the States have adopted the criteria proposed by the appellant, namely, the 0.1 density criteria, as **it would result in opening a Pandora's box, and it would result in all the States undertaking the task of reassessing the forest all over again which has since been settled on the basis of existing criteria.***”

- iv. Further, this Hon’ble Tribunal having upheld all reports up till the 6th part final report of RC-II, as well as the gazette notification dated 10.08.2023, the direction in para 91 cannot be interpreted to have negated the said finding, and in effect setting in motion a ‘Review Committee-III’ by a judicial order, which was obviously never intended by this Hon’ble Tribunal.
11. It is also important to note that after the judgment dated 12.09.2023, the RC-II in its 7th Part Final Report submitted in November 2023, has referred to/quoted the said para 91 of the judgement, and has already acted thereupon. As per this Report, the part of the survey numbers which were “finalized” by the T&A Committee as private forest, have already been verified as per the three parameters upheld by this Hon’ble Tribunal and the Hon’ble Supreme Court. For rest of the survey numbers the RC-II was carrying the verification as per the said directions. In this regard reference may be had to 7th Final Report which is annexed as Annexure-A26 to the

Affidavit filed on 05.08.2024 at **Pages 994 to 1126**. In particular, reference may be had to **Page 1001** containing the summary of the Report in relation to the survey numbers which has been “finalized” as private forest by the T&A Committee. The tabular chart clearly states that the **RC-I & RC-II, after field verification** has reviewed the survey numbers which were finalized by T&A Committee.

12. The Respondent No. 1 would conclude by stating that the Applicant has neither challenged the 2nd part Final Report of RC-II inter alia holding that the Respondent No. 1 land does not satisfy the criteria of private forest, nor have they challenged the notification dated 10.08.2023 declaring the survey numbers which are private forest (which does not include the land of the Respondent No. 1), nor have they challenged the 7th Part Final Report of RC-II prepared after taking into account the directions of para 91 of the judgement dated 12.09.2023. Therefore, as of today there is no basis in the OA of the Applicant, for the same to be considered or allowed. As such, the Respondent No. 1 seeks dismissal of the OA.

FILED BY:

Abhishek

**FOR KARANJAWALA & CO.
ADVOCATES FOR DLF HOMES GOA PVT. LTD.
7 FACTORY ROAD
NEAR SAFDARJUNG HOSPITAL
NEW DELHI 110 029**