

**ORIGINAL APPLICATION NO. 4 OF 2020**

**IN THE MATTER OF:**

CANSAULIM-AROSSIM-CUELIM CIVIC AND CONSUMER  
FORUM AND ANOTHER ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

**I N D E X**

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**SWARUPAMA CHATURVEDI**  
ADVOCATE FOR THE RESPONDENT NO.4

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH, PUNE**

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**WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT No. 4**

**ABUSE OF PROCESS/ MULTIPLE SCRUTINY**

1. The instant case is a classic example of conduct which amounts to an abuse of process of the court, if not criminal contempt, as held by the Hon'ble Supreme Court in ***Advocate General, State of Bihar v. M.P. Khair Industries*** (1980) 3 SCC 311 and ***Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.***, (2008) 1 SCC 560, inasmuch as a project which has undergone immense scrutiny at all levels, including under the supervision of the Hon'ble Supreme Court and this Hon'ble Tribunal, is being saddled with another round of litigation, since the Applicants in the OA have not achieved the desired results through the litigation thus far.
2. It is extremely significant to note that the project site in question has been approved for a hotel after an order of the Hon'ble Supreme Court, dated 19.11.2007 (**pg. 180**), calling for a specific report from the GCZMA. The said report dated 03.03.2008 (**pg. 182**) categorically declares the site to be suitable for the project, and that there will be no adverse impact on the environment after considering *inter alia* a hydro geological study of the project site. The Hon'ble Supreme Court by an order dated 07.04.2008 (**pg. 184**), after noting the said report of the GCZMA paved the way for the consideration of the project by the MoEF.

3. The MoEF in turn, through its regional office at Bangalore, conducted a detailed site inspection on 24.03.2010, and submitted a detailed report dated 25.03.2010 (**pg. 190**) confirming that the site is suitable for the project. Significantly, the said site inspection was attended *inter alia* by a director of an NGO called the Goa Foundation, who raised a total of 16 objections/grievances. Pertinently, none of these objections pertained to or even eluded to the existence of or potential damage to water bodies or *nallahs*/drains on the site.
4. The project was accorded clearance on 11.04.2013, after due consideration by the Expert Appraisal Committee of the MoEF, however, the same suffered from a very apparent typographical error referring to the said clearance as a CRZ clearance in its heading, which was subsequently clarified by the MoEFCC to be a composite CRZ and EC. The Applicant though subjected the Respondent herein to protracted litigation in the courts in Goa and before this Hon'ble Tribunal on this account, and to put a quietus to the same, the project proponent volunteered to be referred to the EAC, yet again, to clarify the position. Accordingly, on 09.01.2017, this Hon'ble Tribunal referred the matter to the EAC to reconsider the matter.
5. Subsequently, the project was accorded a composite CRZ and Environmental Clearance on 28.07.2017 (**pg. 62**), which came to be challenged by the Applicants by Appeal No. 84/2017 (WZ). The said Appeal came to be dismissed by this Hon'ble Tribunal on 15.02.2019 by a detailed judgment noting *inter alia* that "*the project has undergone sufficient scrutiny at every level, at State as well as MoEF and all concerns of the Appellants have been addressed.*" No doubt this Hon'ble Tribunal also noted that conditions of the clearance including that relating to water bodies would be complied with.

PRESENT OA

6. The present OA is ostensibly premised on the concluding observation of this Hon'ble Tribunal in its judgment dated 15.04.2019, but is in fact a blatant attempt by the Applicants to stall the project after having lost in its previous endeavours; by creating a fresh cause of action. The Applicants have done so by orchestrating an attempted survey of the property, which is evident from a letter dated 28.05.2019 addressed by them to the Water Resources Department (**pg. 69**), and used the said inspection as a basis to file the instant OA.
7. It is important to note that the grievance of the Applicants in the OA, which can be gleaned from its prayer (**at pg. 35**) which are three-fold:
  - a. A direction for stoppage of filling of water bodies;
  - b. A direction for demarcation of water bodies;
  - c. A direction for restoration of water bodies.
8. Thus, the OA is predicated on existence of water bodies and drains, and their alleged filling up by the Respondent No. 4. To this end, the Applicants rely on a report of the Water Resources Department dated 13.04.2015 prepared in the absence of the project proponent. Pertinently, the said report itself admits that the so-called water bodies are not reflected on the survey plan of the project site. Furthermore, WRD withdrew the objections raised on 21.10.2015. It will also be not out of place to mention that representatives of WRD were part of Joint Inspection Committee constituted by this Hon'ble Tribunal and they have completely concurred with the findings of the Committee that no water bodies exist on the site.

**LEGAL STATUS OF WATER BODIES IN PRIVATE PROPERTY**

9. In ***Colva Civic and Consumer Forum v. State of Goa***, (2016) 3 Mah LJ 312, the High Court of Bombay at Goa has had occasion to deal with a similar allegation, with respect to

grievances on the basis of so-called water bodies not reflected in survey plans. It held that:

"8. ...we find that on perusal of the survey entries in Form I and XIV, there is nothing to point out about the existence of such a pond in such entries. ... .. Exercise of jurisdiction by this Court to protect a pond in a PIL has to essentially be in the context of maintaining a public pond. There can be no public interest to maintain a private water pond, put up in private property as the petitioners do not claim to have any access to such pond. ... .. Apart from that, only when the ponds are natural ponds, which is a natural wealth, the Courts can take measures to protect such ponds.

9. A pond is a body of standing water, either natural or artificial. They may arise naturally in floodplains, as part of a river system, or there may somewhat be situations where there are isolated depressions, which cause water accumulation. ... .. There are also ponds which are frequently human-constructed on country side by farmers and villagers by digging in their backyard. ... .. In the present case, considering the photographs produced on record and the location, there is no material to suggest that any natural body was existing at the site. Mere accumulation of water which is stored for consumption of the animals, cannot by itself be the natural pond for the benefits of the Villagers/public at large...."

[Emphasis added]

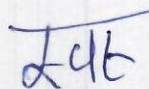
10. Similarly, in the instant case, but for one water body, the so-called other water bodies and drains are not shown on the survey plan. What the Applicants seek is an inclusion of the so-called water bodies and drains/*nallahs* in the survey plan by means of the instant OA.

**JOINT INSPECTION REPORT**

11. This Hon'ble Tribunal on 12.02.2020 called for a joint inspection report, which would show that the present OA is premised on a multitude of falsities with respect to the existence of water bodies and their alleged filling up by the Respondent No. 4.
12. Pertinently, the said report confirms that:
- a. The *"drains shown by the Complainant are not a part of any natural drainage"*;
  - b. *"there is no water body in this property"*
  - c. *"When the Committee visited the site no water was seen in this property"*.
  - d. The supposed natural pond claimed by the Complainants in the middle of the property *"was just a small depression of approximately 1 meter depth and radius of less than 2 meters"*.
  - e. *"There was no dumping/ filling of construction debris within the nallah and low laying areas with regard to approved survey plan."*
13. In fact, the claim of existence of the so-called water bodies is in fact belied also by the coloured photographs annexed by the Applicants themselves to their counter affidavit, which shows that their claim is a massive exaggeration, if not a figment of their imagination. For all the claims made by the Applicants of so-called water bodies, the only photograph annexed by them of a so called water body is that of an alleged pond (**at pg. 132**), which in fact is a mere depression of approximately 1 meter depth and radius of less than 2 meters, as has been rightly noted in the joint inspection report.

14. In summary, it is submitted that:
- a. The site of the project in question has undergone multiple levels of scrutiny from every conceivable authority and judicial fora.
  - b. The instant OA is *ex facie* an abuse of process having been filed after the dismissal of the challenge to the EC.
  - c. The instant OA is replete with falsities as can be seen from the joint inspection report, and the OA ought to be dismissed on this ground alone.
  - d. The so-called water bodies are non-existent as confirmed by the joint inspection report, and the drains/*nallahs* are not natural nor a part of the natural drainage of the village.
  - e. The so-called water bodies are in fact negligible depressions which cannot be equated to ponds, and hence are understandably not reflected in the survey records, as a consequence of which they will not carry any legal restriction *vide Colva Civic and Consumer Forum v. State of Goa*, (2016) 3 Mah LJ 312.
  - f. The instant OA is clearly vexatious and *mala fide* and hence must be dismissed with costs.

SUBMITTED BY



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FILED ON 23.09.2020