

Item No. 11

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No.209/2020
(Earlier O.A. 52/2018 (WZ))

Kashinath Shetye & Ors.

Applicant(s)

Versus

Chief Secretary State of Goa & Ors.

Respondent(s)

Date of hearing: 24.09.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Kashinath Shetye, Applicant in person

Respondent(s): Ms/ Fawia M. Mesquita, Advocate for GCZMA
Ms. Ruchira Gupta, Advocate for R-3, 7 & 14
Mr. Vledson Branganza, Advocate for R-17

ORDER

1. This application has been filed under Sections 14 & 15 of the NGT Act, 2010 for stopping construction of MRF Factory on land bearing survey no. 259. Other prayers are to maintain wetlands as per the Wetland Rules, by removing the encroachments from the embankment of River *Khandepar*. Prayer is also to demolish a *Bandhara* (check dam) built by MRF near the river.

2. The applicant has stated that there are 11 rivers sustaining the Goan eco-system with 42 tributaries which are not only the source of potable water but also support the eco-system. *Mhadei* River is joined by

the Khandepar River at Usgao and thereafter it is known as Mandovi River which joins Valvanti River. It is further joined by Mpusa River and thereafter it is discharged into Arabian Sea. There is a thick forest in the catchment areas. Khandepar River is covered by the definition of 'wetland'. No construction is permitted in the buffer zone of the wetland. The State is under obligation to protect the wetlands and the forests. In the year 1973, Madras Rubber Factory (MRF) was established on the bank of the River. Over the years, it expanded its operations causing rampant pollution. In 2016, it purchased more land and though the aggrieved villagers approached the authorities, no action was taken. PIL No. 01 of 2017 (Pilerne Citizens Forum vs. State of Goa) was filed before the High Court raising the issue of protection of the wetlands which was disposed of on 19.07.2017, recording the statement of the Advocate General to the effect that grant of 'in principle' approval by the State did not obviate the need to obtain other statutory approvals from the local panchayats or other departments. The unit is a 'red' category industry as it involves manufacturing of tyres but has been wrongly classified as 'orange' category. Its raw material involves synthetic rubber etc. and the manufacturing process results in harmful gases and liquids. The unit is also committing theft of river water. Waste water discharge from the unit is harmful for the water bodies, being acidic in nature. It has concentration of Ammonia and Sulphate. Odour is also released in the production process.

3. Considering the averments in the application, filed on 12.07.2018, the Tribunal issued notice on 13.07.2018 to 17 respondents who have been impleaded. However, during the hearing it has been explained that the relevant respondents are only the State PCB, the State Wetland Authority and the Project Proponent, apart from the Forest Department.

The contesting respondents have filed their replies to which a brief reference may be made. The stand of the State PCB is that all the grievances of the applicant have been duly looked into and addressed. The unit was given consent to operate in the year 1993 and was categorized as 'orange' category in view of opinion of the Technical Advisory Committee, its environmental score being 55. The water quality in the relevant area near the river is within the parameters. The unit has installed ETP and does not release untreated effluents into the river. The State PCB has installed Continuous Ambient Air Quality Monitoring System (CAAQMS) at two locations. The air quality is within parameters. Stack monitoring is also duly considered and found in order.

4. The affidavit of the Goa State Wetland Authority is that the process of identification and declaration of wetlands is underway in consultation with the National Institute of Oceanography (NIO). However, the said process is not in any manner affected by the project. The buffer zones up around the fresh water bodies are being dealt with as per the Wetland Rules.

5. The Forest Department has mentioned that procedure was duly followed for felling of coconut trees.

6. The GCZMA in its affidavit filed on 14.01.2020 stated that the survey number in question does not fall in CRZ Notification.

7. We may finally refer to the detailed reply of the project proponent as follows:-

“9. The Respondent No. 17 states and submits that in fact the insinuations made by the Applicants against the Respondent No. 17 that the Respondent No. 17 has felled standing trees from Survey No 259 on the basis of an in

principle approval granted to it by the Investment Promotion and Facilitation Board by its letter dated 03.07.2017 are false to the knowledge of the applicants, as facts hereinafter set out so disclose, so also is the allegation by the applicants that the Respondent No. 17 has been granted permissions in terms of the in-principle approval granted by the Investment Promotion and Facilitation Board of permissions by the authorities and that this Respondent has been an exception to the rule of withdrawal of permission by the authorities, which otherwise incorrect and bereft of facts.

10. *The claim by the Applicants of contamination of the River Khandepar by the Respondent No. 17 by discharge of harmful effluents and air pollution released from the factory of the Respondent No. 17 is also to the knowledge of the Applicant based on false facts, as facts hereinafter set OU7 will disclose and without any material substantiation of facts the pleaded petition.*
11. *The Respondent No. 17 states that on facts set out in this reply this Learned Tribunal may be pleased to upon hearing the Respondent No. 17 discharge the notice issued and dismiss the Application on the aforesaid grounds.*
12. *Elaborating the submission of this Respondent on the contention that the Application deserves to be rejected under Rule 14 of the National Green Tribunal Procedure Rules, the Application apparently discloses that the averments contained in paragraphs 1 to 12, 38, 39, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 set up for cause of action and those averred in paragraphs 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 57 set up for cause of action and the relief set out in paragraphs 58 are inconsequential to one another.*
13. *The Respondent No. 17 states and submits that a bare reading of prayers (a) (h), (l) on one hand and prayers (b),(c),(d),(e),(f), (i), and (j) on the other hand would so disclose that the Application is hit by Rule 14 of the National Green Tribunal Procedure Rules. The reliefs as sought for in terms of prayer (b) are incompetent and do not fall within the scope and ambit of the provisions of the National Green Tribunal Act and the NGT Procedure Rules framed there under.*
14. *That apart, the Applicant claims in the Application that MRF plant existed in property bearing Survey No 258 in the year 1973. The Applicant annexes to the Application consent to operate issued to the Respondent No. 17 in the year 2016, and inter alia seeks relief against the Respondent No. 17 by filing this Application more particularly in terms of the prayers sought for in the Application without setting out the mandatory requirement that the cause of action pleaded in the Application is within limitation under the Act.*

15. *In fact the Application is a jumble of facts and causes of actions without setting out or spelling out any cause of action as to whether the Applicants are in appeal against the orders or as to whether the Application is a circumvention of an appeal to orders on an application under Section 14 and 15 of the National Green Tribunal Act. In fact, the Application has been couched as an Application under Section 18 read with Sections 14 and 15 of the National Green Tribunal Act which itself is not maintainable.*
16. *In fact the Applicants have approached the learned Tribunal with false facts, concealing the true facts, from this Hon'ble Tribunal in a bid to create a cause of action, when there is none. The 1st Applicant who addressed this Learned Tribunal at the admission stage is otherwise familiar and well versed with procedures under the National Green Tribunal Act and the National Green Tribunal Procedure Rules as he is a regular litigant before this Learned Tribunal and also a petitioner in many of the petitions filed inter alia at the Goa Bench of the Bombay High Court ostensibly on a claim of a PIL, and the 1st Applicant claims to be an RTI Activist in the preamble of many of his petitions.*
17. *The facts hereinafter set out would disclose that the Application is malafide and meant to harass, coerce, and drag this Respondent into frivolous litigations and or a motivated attempt with ulterior intentions.*
18. *As a fact, the application is filed by the Applicants at the instigation of two dismissed employees of the Respondent No. 17 namely Shri. Laxmikant Naik and Shri. Pundalik Naik who also had instigated Goa Foundation and others to file a PIL Writ Petition 17/2018 in the Goa Bench of the Bombay High Court against this Respondent and others namely the authorities who have granted Clearances, Approvals, No Objection Certificates and/or permissions to this Respondent for the expansion of the existing plant of this Respondent for setting up a unit to manufacture two wheeler tyres and tubes in the property adjoining the existing plant in the property bearing Survey No 259/2A of the Village of Tisk, Usgao. Thus, the background for filing this application is only on account of these two erstwhile employees who obviously were having animosity against the Respondent No.17 and used the Applicants to file the petition before this forum with an ulterior intention to obtain an embargo on the expansion project of the Respondent 17, which otherwise has the approval of all the authorities concerned.*
19. *The said Petition is infact being adjudicated by the Hon'ble High Court and the Hon'ble High Court was pleased to make an Order dated 06.06.2018 to the following effect "We are of the opinion that before the matter is considered on merits further, it would be advisable to have a joint meeting between the representatives of the Petitioner and the Respondent No. 9 Company to discuss the issue and strive*

to minimize the areas of dispute." In the said PIL Writ Petition 17/2018, wherein the present Respondent is arrayed as the Respondent No. 9, the Collector of South Goa was requested to preside over the meeting to guide the participants. In terms of further orders passed in the said Writ Petition the Hon'ble High Court was pleased to direct the Collector, South Goa to carry out an inspection at site and furnish a report to the Hon'ble High Court in the matter of grievances of the Petitioners in the said PIL Writ Petition 17/2018, and accordingly the Collector, South Goa had carried out inspections of the site of the existing plant of the Respondent No. 17 and the proposed expansion and submitted reports before the Hon'ble High Court. Hereto annexed and marked as **ANNEXURE R17-1** is a copy of **the said Order dated 06.06.2018 in the** said PIL Writ Petition 17/2018. This Respondent shall refer to the said report whilst dealing with the merits of the claim in the Application.

20. As a fact in the said PIL Writ Petition 17/2018, the Petitioners have inter alia sought for the following reliefs which in fact the Applicant has sought for in terms of Prayer (a),(f),(g),(h),(i),(j),(k),(l) of the present Application against this Respondent. The Hon'ble High Court is seized of the issue in so far as this Respondent is concerned which the Applicant seeks to agitate as against this Respondent before this Hon'ble Tribunal in this Application. **It is submitted that, since the Hon'ble High Court of Bombay at Goa had not granted any favourable orders in the writ petition, the applicants have now approached this Hon'ble Forum to seek such remedy which otherwise is in direct consideration of Hon'ble High Court,** thus the present application lacks bonafides and it amounts to "forum shopping" by the applicants.
21. Dealing with the merits of the claim, the Applicant set out under the heading 'IV. Facts Constituting the Cause'. The averments under the said Item IV as against this Respondent stated to be constituting the cause of action are spelt out in paragraph 13, 14, 18, 19, 20, 21, 22, 23, 24,25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 43 and 57 on the basis of which the Applicant seek a relief against this Respondent in terms of Prayer (a), (d), (f), (g), (h), (i), (j), (k), (l) of the Application.
22. As recorded in the Order of this Learned Tribunal dated 27.08.2018, the Applicants aver and allege as represented before this Learned Tribunal at the stage of Admission by the Applicants that **the Respondents have under single window clearance in terms of the provisions of Goa Investment Promotion Act, 2014, have obtained from the Goa Investment Promotion and Facilitation Board Clearances for setting up its expansion plant.** In fact the Applicants have pressed into service at the stage of Admission before this Honourable Tribunal, the statement made by the State Government in WP No 1 of 2017 in the matter of **Pilerne Citizens Forum v. The State of Goa,** to

the effect that the in principle approval granted by the concerned authority granted on the basis of a resolution of the Board did not by itself permit the private respondents to obtain statutory permissions from the authorities including the local Panchayat. Thus, the citation referred above is applicable only to the facts and circumstances of that particular case, moreover in light of the fact the above cited case is still pending and had not reached a finality on any issues, merely citing the observations mentioned in farad orders is inappropriate and hence has no application to the present application.

23. *In fact the Applicants have deliberately falsely averred the said fact at paragraph 23 and 24 of the Application under Reply, falsely claiming inter alia in the said paragraphs that the Government authorities had granted necessary permissions to MRF to set up a new plant unit for merely the purpose of vulcanizing and re-treading, but actually for the manufacture of new tyres which could cause pollution in the River Khandepar and falsely claiming that as alleged in paragraph 18 that in the year 1973 Madras Rubber Factory was allowed to establish on the bank of the River Khandepar on a small scale in Survey No 258 for vulcanizing and cold re-treading of tyres and that over the years the Respondent No. 17 had been regularly expanding its operations and clandestinely manufacturing tyres under the garb of vulcanizing and cold re-treading.*
24. ***At the outset, the averments apart from being false are made irresponsibly and meant to mislead this Hon'ble Tribunal with a doctored cause of action. The first Applicant in particular and the rest of the Applicants as well cannot claim ignorance of the fact as the same are available in the public domain. The Application with respect is a bundle of false facts, recklessly and irresponsibly averred, in fact to create a cause of action which does not exist.***
25. *At the outset, this Respondent states and submits that the plant in Survey No 258 of the Village of Usgao exists in the vicinity of the River Khandepar, since the year 1973, when the Respondent Factory was established and set up a full-fledged plant for the manufacture of tyres and tubes for four wheelers upon obtaining due permissions and consents from the concerned authorities for setting up the said plant. The license granted by the Government of India dated 23.11.1972 under Rule 7 of the Registration and Licenses of the Industrial Undertakings Rules, 1952 establishes the said fact. The Licenses granted under the Factories Act and renewed from time to time will also establish the fact. Further the licenses granted under the Factories Act, will further establish the said fact. Hereto annexed and marked as **ANNEXURE R17-2 COLLY** is the copy of said licenses granted from inception.*

26. *The name of Madras Rubber Factory Ltd., was later changed to MRF Ltd. in or about the year 1980. The plant set up by this Respondent in the said property bearing Survey No. 258 has been operational right from the year 1973.*
27. *It is stated and submitted that MRF Ltd. is an established company carrying on the manufactures of tyres and tubes and has plants in nine states of India, apart from generating employment in the country as well as the State of Goa, where the Respondent No. 17 provides employment to around 2500 persons and contributes to the GDP, it inter alia exports tyres and tubes and earns foreign exchange for the country and as of date contributes to the revenues of the State of Goa to the tune of 312 crores.*
28. *To sustain the economic viability of the existing plant the Respondent No. 17 decided to expand it by setting up another unit for manufacture of two wheeler tyres and tubes. The Respondent No.17 acquired land through private negotiation in the vicinity of the existing plant namely the property bearing Survey No 259 in the Village of Usgao to the extent of 53,008 square metres in the year 2015 after ascertaining by documented evidence that the said land was earmarked and zoned in the Regional Plan 2021 for the purposes of "General Industries", which though in force was kept on hold, after also ascertaining from the Department of Forests that said land was not a "forest" and also that the said property was not covered by the CRZ Regulations.*
29. *Apparently from facts pleaded the Applicants are seeking intervention from this Hon'ble Tribunal concerning the expansion of the project of the Respondent No.17 in Survey No 259 and taking advantage of the said fact are seeking reliefs on innocuous pleadings in so far as the existing plant of this Respondents in Survey No 258 is concerned, which is existing since the year 1973. **As a fact the Respondent No. 17 has been carrying on the manufacture of tyres in the existing plant in survey no.258 on following the rule of law, on in fact obtaining all the requisite consents under the law from time to time.***
30. *As a fact on enactment of the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, the Respondent No. 17 has been carrying on the manufacture of tyres on obtaining consents from the said concerned authorities. **As a fact the Respondent No 17 has also been drawing water from River Khandepar for the manufacture of tyres in the existing plant on due permissions and licenses from the state Government for drawl of water against payment of requisite fees on drawl of water from the River Khandepar in quantities metered by the Water Resources Department.** This Respondent craves leave to refer and rely on the requisite permissions as and when required. As a fact this Respondent draws raw water from*

the river and on a captive filtration plant, filters the said water at its own expense and uses it for its captive consumption.

- 31. In the background of these facts, the Respondent No. 17 now sets out facts concerning the permissions/consents obtained and secured by this Respondent for setting up the said plant which substantiate the claim of the Respondent No. 17 that the Application of the Applicant apart from not disclosing a cause of action contains false facts and is barred by Limitation and is hit by the provisions of Rule 14 of the National Green Tribunal Procedure Rules.*
- 32. It is submitted that as most of the tyre companies have gone for expansion, this Respondent also choose to expand its factory in Goa thus increasing its production capacity and in the interest of making the plant economically viable the Respondent No. 17 decided to have an expansion of the existing plant by proposing to set up a unit to manufacture two wheeler tyres and tubes, and in the light of the Investment Policy of Government of Goa, 2014, as advertised and held out by the Government of Goa, and accordingly the Respondent No.17 decided to go ahead with the intended proposal of carrying on the proposed expansion of the plant. Hereto annexed and marked as **ANNEXURE R17-3** a copy of the said policy.*
- 33. As a fact, having decided to have an expansion of the existing plant by proposing to set up a unit to manufacture two wheeler tyres and tubes, the company began to negotiate the purchase of adequate land. In the year 2013 the Respondent No. 17 was approached by the owner of the property bearing Survey No 259/2 now identified as 259/2A for purchase of his property which the Respondent No.17 found convenient as it was adjacent to the existing plant of the Respondent No.17. After having ascertained in the course of due diligence that the said property did not have agricultural tenants and was not a forest as so stated by the agricultural department in its letter date 31.12.2013 which is annexed hereto and marked **ANNEXURE R17-4** which was furnished to the Respondent No. 17 by the owner of the said property and after ascertaining that the said property was earmarked in the Regional Plan of 2021 as meant for "General Industry" the Respondent No 17 proceeded to purchase said property by Sale Deed dated 08.09.2014 at a cost of Rs. 26,50,40,000/- **upon paying** a sum of Rs. 1,06,02100/-towards the stipulated stamp duty and registration fees. The Respondent No.17 shall crave leave to refer and rely on the said Sale Deed dated 08.09.2014, as and when required.*
- 34. After completing the procedure of getting the name of the company recorded as occupant in the Form I & XIV of the said property by way of mutation, the company made an application to the Goa Investment Promotion and Facilitation Board, namely the Respondent No. 2 in the said PIL Writ*

Petition 17/2018. on 27.04.2015, for an in principle approval for expansion of the Respondent No.17's proposed project. The application in the prescribed format was accompanied inter alia by a Project Report, where the company inter alia disclosed that the investment with the expansion would be Rupees 875 crores and that there would be direct employment for additional 500 people and indirect employment for another 750 people, that the additional contribution would be in the form of VAT as then when it was in force Rs. 3.5 Crores per annum and that additional contribution to Central Excise would Rs 66 Crores per annum and additional contribution to the Respondent No. 1 would be Rs. 1 lakh per annum.

35. Upon considering the Application of the Respondent No.17, the Goa Investment Promotion and Facilitation Board granted to the Respondent No.17 at its 6th meeting held on 17.06.2015, an in principle approval which has been conveyed to the Respondent No.17 by the Goa Investment Promotion and Facilitation Board vide its letter bearing No. 11/2015/GOA-IPB/47 on 3.7.2015. Hereto annexed and marked as ANNEXURE R17-5 COLLY is a copy of the said letter dated 3.7.2015 bearing No.11/2015/GOA-IPB/47 and the minutes of the 6th meeting of the Goa Investment Promotion and Facilitation Board dated 17.06.2015.
36. In fact the Respondent No.17 paid an amount of Rupees 2 lakhs towards the initial registration cost as required by the Goa Investment Promotion Act. After the said in principle approval was granted to the Respondent No. 17, by an Application dated 31.07.2015, the Respondent No. 17 independently applied for conversion of land use of the said property from "Orchard" to "non-agricultural" use to the Collector South Goa, in the prescribed form under Sub Section 1 of Section 32 of the Goa Land Revenue Code, 1968, for conversion of 53,008 sq. meters of the said property. In fact, the said application for conversion was made under the provisions of the Goa Land Revenue Code. Here to annexed and marked as **ANNEXURE R17-6** is a copy of the said application for conversion dated 31.07.2015.
37. By an Application dated 05.11.2015, addressed to the Town and Country Planning Department, the Respondent No.17 officially sought the information regarding land use/zoning in respect of the property bearing Survey No. 259/2A, and in response to the said letter, by letter dated 13.11.2015 of the Deputy Town Planner, the Respondent No. 17 was informed that as per the Regional Plan for Goa 2001, the property under reference was earmarked as an Orchard zone and as per the Regional Plan for Goa 2021 (On hold) the property was earmarked and/or zoned as General Industry. Hereto annexed and marked as **ANNEXURE R17-7 COLLY** is a copy of the said

Application dated 05.11.2015 and the response thereto by the Deputy Town Planner vide letter dated 13.11.2015.

38. *It is stated and submitted that the Regional Plan of Goa 2011, was ordered to be scrapped and after the said plan was scrapped a new Regional Plan for Goa for the year 2011 to 2021 was ordered to be prepared by the Chief Town Planner under the provisions of the Town and Country Planning Act, and after all the requisite procedural formalities were followed, the Government of Goa inter alia by Notification dated 26.04.2011 and 09.09.2011 published in the Official Gazette dated 28.04.2011 and 15.09.2011, notified the said plan. Hereto annexed and marked as **ANNEXURE R17-8 COLLY** is a copy of said notification, dated 26.04.2011 and 09.09.2011 published in the Official Gazette dated 28.04.2011 and 15.09.2011 respectively, however apparently the said plan is stated to be kept on hold since 04.06.2012. However, the said plan notwithstanding the said fact is in force, as there is no provision in the Goa Town and Country Planning Act, permitting the Government and/or the authorities to keep the said plan on hold.*
39. *As a fact on the 01.01.2016, the Government of Goa (Respondent No. 1) through its Department of Industries, in exercise of power conferred by sub section 2 of Section 7 by the Goa Investment Promotion Act, 2014, **demarcated and declared the whole area specified in the Schedule for the purposes of Investment Promotion under the said Act, and the whole area was the property bearing survey No 259/2A of the Village of Usgao.** The said notification was gazetted in the official Gazette II series No. 42 dated 14.01.2016. Annexed hereto and marked as **ANNEXURE R17-9 COLLY** are the copies of the said letter dated 01.01.2016 and of the said notification dated 14.01.2016.*
40. *As the Respondent No.17 felt that for an optimal utilization of resources concerning the expansion project of the Respondent No. 17, an additional area of land would be required, the Respondent No.17 started negotiating for purchase of another property adjacent to the property bearing survey No. 259/2A, namely the property bearing Survey No. 259/1, with an area of 57,990 sq. meters, which belonged to M/S CMM Pvt. Ltd. and in the course of due diligence ascertained that the said property was not a Government Forest and did not form part of any Government Forest and was not also a Private Forest within the meaning of the Forest (Conservation) Act 1980, which was confirmed vide letter dated 07.12.2016 issued by the Dy. Conservator of Forests, North Goa Division at Ponda and further ascertained the fact from the Town and Country Planning Department that the said property was inter alia earmarked in the 2021 Regional Plan of Goa as a General Industrial area, which was confirmed vide letter dated 28.11.2016 issued by the Town*

and Country Planning Department. Hereto annexed as **ANNEXURE R17-10 COLLY** is a copy of said letter dated 07.12.2016 issued by the Dy. Conservator of Forests, North Goa Division at Ponda and the letter dated 07.12.2016 issued by the Town and Country Planning Department.

41. By a Sale Deed dated 26.08.2016, registered with the office of the Sub Registrar of Ponda, under No. 2437/16 dated 26.09.2016, the Respondent No. 17 purchased the said property bearing Survey Number 259/1 admeasuring an area of 57,990 sq. meters at the cost of Rs. 28,99,50,000/- (Rupees Twenty-Eight Crore, Ninety-Nine Lakhs, Fifty Thousand Only) which taking into account the stamp duty and registration fees works to a sum of Rs.1,15,98,190/- (Rupees One Crore, Fifteen Lakhs, Ninety-Eight Thousand One Ninety Only) over and above the cost of the property. The Respondent No. 17 craves leave to refer and rely on the said Deed of Sale dated 26.08.2016 as and when produced.
42. By an online Application dated 30.09.2016, inwarded under number 58100, the Respondent No. 17 made an Application for Consent to Establish, to the Goa State Pollution Control Board in the prescribed format. Here to annexed and marked as **ANNEXURE R17-11** is a copy of the said Application dated 30.09.2016, which was also made as a routine application.
43. In the meantime by an Application dated 06.10.2016 the Respondent No. 17 sought a No Objection from the Coastal Regulatory Zone Authority, hereinafter referred to as "CRZ Authority" in order to enable the Collector to process the said Application for conversion of land, which the Respondent No. 17 sought to confirm to the effect that the Coastal Regulation Zone (CRZ) Notification was not attracted in respect of the said property bearing Survey No. 259/1 and 259/2A. **Accordingly the CRZ Authority by letter dated 07.10.2016 referring to the Application of the Respondent No. 17 dated 06.10.2016 captioning the letter as proposed expansion of factory building in survey number 259/2A and 259/1, confirmed that the Goa Coastal Zone Management Authority by the earlier letters dated 11.03.2008, had opined that the Survey no.258 of the Village of Usgao did not attract the provisions of CRZ Notification, 1991 and that the properties bearing Survey No. 259/2A and 259/1 were also adjacent to the property of Survey No. 258, and hence did not attract the provisions of CRZ Notification. Hereto annexed and marked as ANNEXURE R17-12 is a copy of the said letter dated 07.10.2016 addressed by the Goa Coastal Zone Management Authority.**

44. After the purchase of the said property bearing Survey No. 259/1, the Respondent No. 17 applied to the Goa Investment Promotion and Facilitation Board, the Respondent No. 5 herein for further in-principle approval of the expansion project of the Respondent No. 17, in the property bearing Survey No. 259/1.
45. In the meantime after following the required procedural formalities namely recommendations of the Town and Country Planning Department, the Forest Department and the Mamlatdar of Ponda and on application of mind, **the Collector South Goa, granted the conversion Sanad for change of use of land from Agriculture to Non-Agricultural use, namely industrial purpose, in respect of the property** bearing Survey No.259/2A on 21.10.2016, which was accorded to the Respondent No. 17, against payment of a conversion fees in the sum of Rs. 1,06,01,600/- (Rupees One Crore, Six Lakhs, One Thousand Six Hundred Only). Annexed hereto and marked as **ANNEXURE R17-13** is a copy of the Conversion Sanad dated 21.10.2016. It is stated and submitted that however there is a corrigendum dated 20.12.2016 to the said Conversion Sanad which the Respondent No. 17 annexes hereto as **ANNEXURE R17-14**.
46. After obtaining the said Conversion Sanad, the Respondent No. 17 made an Application dated to the Forest Department in Form B for felling of trees in the property bearing Survey No. 259/2A of the Village of Usgao.
47. On the 24.10.2016, the Respondent No. 17 made an Application for Technical Clearance to the Chief Town Planner, Town and Country Planning Department namely the Respondent No.8 herein, in the prescribed form as per Appendix A1/TCP inwards in the said office on the 24.10.2016 for development of the properties bearing Survey No. 258 and 259/2A.
48. On 07.11.2016, the Respondent No. 17 made an application inwards on the said date namely a revised Application for Technical Clearance, which included also development of the property bearing Survey No. 259/1. The Consent to Establish was granted by the Goa State Pollution Control Board on 09.11.2016, pursuant to the Application of Respondent No. 17 dated 30.09.2016. The said Consent to Establish accorded by the Goa State Pollution Control Board is annexed hereto as **ANNEXURE R17-15**.
49. At a meeting held on 17.11.2016, namely the 13th meeting, the Respondent No. 5 granted an In-Principle Approval for expansion in Survey No. 259/1, pursuant to the application of Respondent No. 17 dated 17/10/2016. As a fact the Respondent No. 17 paid an amount of Rupees 2 lakhs for initial registration cost as required by the Goa Investment Promotion, Act. In the meantime, in the course of processing the application for conversion of the property bearing Survey

No. 259/1, the office of the Collector of South Goa, asked the Respondent No. 17 to obtain an NOC from the Executive Engineer National Highways, and accordingly on 01.12.2016 the said NOC was obtained from the Executive Engineer National Highways, which is annexed hereto as **ANNEXURE R17-16.**

50. On the 23.11.2016 the Respondent No. 17 again made an application to Forest Department in Form B for felling of trees in the property bearing Survey No. 259/1, under the Goa Preservation of Trees Act. The Town and Country Planning Department granted the Respondent No. 17, Technical Clearance for development in property bearing Survey No. 258, 259/1 and 259/2A on 25.11.2016, against payment of infrastructure tax of Rs. 2,92,40,900/- (Rupees Two Crore, Ninety-Two Lakhs, Forty Thousand, Nine Hundred Only) and a processing fee for expansion in the sum of Rs. 6,15,946/- (Rupees Six Lakhs, Fifteen Thousand, Nine Hundred and Forty-Six Only) Hereto annexed and marked as **ANNEXURE R17-17** is a copy of the said Technical Clearance for development in property bearing Survey No. 258, 259/1 and 259/2A on 25.11.2016.
51. The Respondent No. 17 also made an Application on 27.09.2016 to the Goa State Pollution Control Board to extend the Consent to Establish, in respect of the property bearing Survey No. 259/1.
52. In fact pursuant to the Application of Respondent No. 17 under Section 17A of the Town and Country Planning Act, the Town and County Planning Department granted permission for cutting of land on 28.11.2016. Hereto annexed and marked as **ANNEXURE R17-18** is the copy of said permission granted by the Town and Country Planning Department dated 28.11.2016.
53. As a fact pursuant to the Application of Respondent No. 17 to the Health Department, the Respondent No.17 was granted an NOC from the Health Department on 30.11.2016 under the provisions of the Health Act. Hereto annexed and marked as **ANNEXURE R17-19** is a copy of the NOC from the Health Department dated 30.11.2016.
54. By a letter dated 02.12.2016, captioned as 'demarcation and notification of an area as investment Promotion area under Section 7 of the Goa Investment Promotion Act was written by the Respondent No. 5 to the Under-Secretary Industries, Government of Goa to notify the area for the purpose of Investment Promotion area under the Goa Investment Promotion Act, as Investment Promotion Area in respect of Survey No. 259/1. Hereto annexed and marked as **ANNEXURE R17-20 is** a copy of said letter dated 02.12.2016.

55. After obtaining the necessary permissions under Section 17A of Town and Country Planning Act, by an application dated 05.12.2016, the Respondent No. 17 approached the Director of Mines and Geology, seeking Permission for cutting and filling of murrum and laterite stones. Hereto annexed and marked as **ANNEXURE R17-21** is a copy of the said application dated 05.12.2016.
56. In fact, by a letter dated 07.12.2016 addressed in response to the query of the Collector South Goa, the office of the Deputy Conservator of Forests, by the letter dated 07.12.2016 captioned as Conversion for use of Agricultural land for non-agricultural purpose in property bearing 259/1, informed the Collector that the matter had been examined by the Sub-Divisional Officer Ponda and it was observed that the area under Survey No. 259/1 admeasuring 57990 sq. meters is not a Government Forest and did not form part of any compartment of North Goa Division Working Plan, and that the same did not figure in the list of survey numbers finally confirmed as Private forests as per the reports of State level Expert Committees headed by Sawant / Dr.Karapurkar and that the tree density of the plot was .08 cultivated trees. However, the majority of species were coconut and it could not be termed as a plot of natural vegetation and would not attract the provisions of the Hon'ble Supreme Court dated 04/02/2015, and the Forest Conversation Act was not applicable to the area. Hereto annexed and marked as **ANNEXURE R17-22** is a copy of said letter dated 07.12.2016.
57. As a fact on 09.12.2016, the Conversion Sanad was granted to Respondent No. 17, for conversion of 57990 sq. meters of the property bearing Survey No. 259/1. The said conversion Sanad was in fact granted pursuant to the application made by the Respondent No. 17, to the Collector of South Goa on 18.11.2016, after the due process of law was followed by the said Collector. Hereto annexed and marked as **ANNEXURE R17-23** is a copy of said Conversion Sanad dated 09.12.2016.
58. The said Conversion Sanad dated 09.12.2016 was granted, after the Respondent No. 17, effected payment of the stipulated conversion fee to the tune of Rs. 1,17,28,000/- (Rupees One Crore, Seventeen Lakhs, Twenty-Eight Thousand Only).
59. Pursuant to the Application of the Respondent No. 17, for **extension of Consent to establish in property bearing Survey No. 259/1, the amendment to the initial Consent to establish was issued by the Goa State Pollution Control Board, to include the property bearing Survey No. 259/1.** Hereto annexed and marked as **ANNEXURE R17-24** is the copy of said Amendment to the Consent to Establish issued by the Goa State Pollution Control Board.

60. On 13.12.2016, **the Forest Department granted permission to the Respondent No. 17 for felling of trees**, against payment of felling fee and Security Deposit in the sum of Rs. 38,100/- (Rupees Thirty Eight Thousand One Hundred Only) in Survey No. 259/2A, which permission was granted with a condition that the agency would plant 381 trees in lieu of felling 127 trees, and that the replantation work shall be completed within 6 months in Survey No. 258, where the Respondent No. 17 company has an existing plant for tyre manufacturing.
61. On 12.01.2017 the Forest Department granted permission to fell the trees in survey No. 259/1, against payment of Felling Fee of Rs. 10,300/- (Rupees Ten Thousand Three Hundred Only) and security deposit of Rs. 20,600/- (Rupees Twenty Thousand Six Hundred Only) thereby aggregating to a sum of Rs. 30,900/- (Rupees Thirty Thousand Nine Hundred Only) with a condition imposed that the Respondent No. 17 should plant 309 trees in lieu of felling 103 within 6 months, which conditions have been duly complied with by this respondent. Annexed hereto and marked as **ANNEXURE R17-25 COLLY** are the copies of the said permissions dated 13.12.2016 and 12.01.2017 for felling of trees granted to the Respondent No. 17.
62. On 27.01.2017, **the Respondent No. 9, (Mines Department) granted permission to the Respondent No. 17 under Rule 53 of Mines and Minerals Rules, pursuant to the application of the Respondent No. 17 dated 07.12.2016, for removal of murrum** against aggregate payment of a sum of Rs. 1,05,08,384/- (Rupees Crore, Five Lakhs, Eight Thousand, Three Hundred and Eighty-Four Only) as Royalty. Hereto annexed and marked as **ANNEXURE R17-26** is the copy of the said permission dated 27.01.2017 issued by the Respondent No.9.
63. As a fact on 23.02.2017, **the Respondent No. 11 Village Panchayat, has accorded, the Construction License** to the Respondent No. 17, pursuant to the Application of the Respondent No. 17 for development of the said property, in terms of the approval granted by the Town and Country Planning Department, on permitting amalgamation of the 3 plots namely Plot No. 258, 259/2A and 259/1, and permitting expansion of the plant of the Respondent No. 17, pursuant to the Resolution of the Panchayat Body of the Respondent No. 11, Village Panchayat dated 23.02.2017, where the Respondent No 11, also took into account the resolution of the Gram Sabha dated 20.11.2016.
64. In fact, the Respondent No. 17 has been accorded the said Construction License after the Respondent No. 17 also furnished the NOC from the Electricity Department with regards to the High Tension Lines, and against payment of a license fee of a sum of Rs. 46,05,492/- (Rupees Forty Six

Lakhs, Five Thousand, Four Hundred and Ninety Two Rupees Only) and fees for amalgamation in the sum of Rs. 3,01,033/- (Rupees Three Lakhs One Thousand Thirty Three Only). Hereto annexed and marked as **ANNEXURE R17-27** is a copy of the resolution of the Gram Sabha dated 20.11.2016.

65. *After all the time taken by the Respondent No. 17 in procuring and securing the said permissions, approvals and licenses in due course and after having obtained all the above said permission, approvals and licenses which were in public domain and which the First Applicant at least would be in the know, so also the rest of the Applicants, this Respondent as on 23.02.2017 had incurred with the expansion of the project a cost to the tune of Rs.64,93,51,657/- which includes the architects fees incurred by the Respondent No. 17 in fact after obtaining the said permissions, approvals and licenses.*
66. *In fact; after obtaining the said Permissions, Approvals and Licenses, the Respondent No. 17 on or about 13.01.2017 commenced with the work of felling of the trees, and through a contractor effected the felling of the trees. The Respondent No. 17 in fact did the felling of the trees along with the coconut trees existing in the property bearing Survey No. 259/1 and 259/2A.*
67. *In fact the coconut trees which were covered by the definition of a tree under the Goa Daman and Diu Preservation of Trees Act, 1984, was withdrawn from the said definition by a Notification dated 20.08.2015. The fact that the trees were cut on procuring the necessary tree felling permission was known to the Applicants.*
68. *Pertinently all the time, the Applicants chose not to challenge in Appeal and/or to impugn the said permissions despite the fact that the Respondents No. 17 had commenced works, leave aside the fact of not objecting to the grant of the said permissions before the authorities.*
69. *The Respondent No. 17 states and submits that in fact on the strength of the permissions obtained spreading over a period of nearly 3 years where in fact the Respondent No. 17 has been affected by escalation in the cost of project and accordingly in order to commence work being equipped with all the permissions, the Respondent No. 17 tendered the Development work and awarded it to reputed construction firm namely Shapoorji Palonji, and accordingly the work was commenced on 04.04.2017. In fact the Respondent No. 17 is a reputed Public Limited Company, answerable to its shareholders and has been a compliant company in so far as following the Rule of Law in the course of business activities.*

70. *In fact, in order to be compliant with the conditions imposed in the permissions for felling of trees, before the work commenced, the Respondent No. 17 acquired saplings which the Respondent No. 17 purchased from the Forest Department and planted the same within the property bearing Survey No.258 and reported compliance of having planted 700 trees as required by letter dated 29.06.2017 which is annexed here to as **ANNEXURE R17-28**. As a fact the trees which have been planted by the Respondent No. 17 are 1500 in number.*
71. *In Response to the said Application dated 24.04.2017 the office of the Town Country Planning Department, wrote to the Respondent No. 17, that the cutting had been permitted as per the proposal of Respondent No. 17, and that any further cutting was to be submitted along with the detail project drawing report showing need regarding such cutting, that the report would include details of level of surrounding properties, neighbouring buildings.*
72. *The facts set out above would disclose that **the Respondent No. 17 has commenced the expansion work upon obtaining the requisite approvals from the concerned authorities inter alia those constituted under the Air (Prevention and Control of Pollution) Act, 1974 which have been granted to the Respondent No. 17 on application of mind and inspection of the site, after analysis of the situation at loco.***
73. *The fact that the Applicants chose not to challenge the said permissions within the time frame prescribed under the National Green Tribunal Act, and it is humbly submitted that the fact that the Applicants have deliberately omitted to refer to the said permissions in the Application and filed this Application ostensibly under Section 18 read with Section 14 and 15 of the Nation Green Tribunal Act, which makes it obvious that the Application innocuous as it is, is barred by rule 14 and 12 apart from by being barred by limitation for facts herein set out.”*

8. We have heard the applicant in person who submitted that his application may be treated as his submission. We have also heard the learned counsel for the State Authorities as well as the project proponent. Their stand is that there is no violation of the Wetland Rules or Forest Law. The project is not within the buffer zone of any water body and is 'ZLD' project. It has been in operation and no pollution has ever been found. The expansion of the project will also not affect the

river or any other wetland. The issue of protection of wetland is being independently dealt with and 10 wetlands around the project in question are likely to be notified as protected wetlands, including the Khandepur River. The Goa Wetland Authority as written letter dated 23.09.2020 to the Water Resources Department of Goa that buffer zone of 50 meters is required to be maintained as protected, till declaration of water body as wetland.

9. In view of the detailed submissions extracted above and in absence of any material to show any violation of Wetland Rules, damage to any water body or evidence of violation of environmental norms, we do not find any ground to pass any further order.

The application is disposed of.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 24, 2020
Original Application No.209/2020
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