

Item Nos. 5 to 7

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 98/2022(WZ)

The Goa Foundation

.....Applicant

Versus

State of Goa & Ors.

....Respondent(s)

WITH

M.A. No. 04/2023(WZ)
[Earlier M.A. No. 101/2022(PB)]
In
Original Application No. 478/2018
Earlier O.A. No. 16 (THC)/2013(WZ)

The Goa Foundation

.....Applicant

Versus

The State Of Goa & Ors.

....Respondent(s)

AND

M.A. No. 03/2023(WZ)
Earlier O.A. No. 63/2022(WZ)
I.A. No. 115/2022(WZ)

The Goa Foundation

.....Applicant

Versus

State of Goa & Ors.

....Respondent(s)

Date of hearing: 14.03.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

In O.A. 98/2022(WZ)

Applicant	:	Mrs. Norma Alvares, Advocate
Respondent(s)	:	Ms. Manasi Joshi, Advocate for R-1 to 4 Mr. Somnath B. Karpe, Advocate for R-5 Shri J.E. Coelho Pereira, Senior Advocate along-with Mr. Vinod Korgaonkar, Advocate for R-6 & 7

In M.A. 04/2023(WZ)

Applicant : Mrs. Norma Alvares, Advocate
Respondent(s) : Mr. Harsha Peechara, Advocate for R-6 & 7

In M.A. 03/2023(WZ)

Applicant : Mrs. Norma Alvares, Advocate
Respondent(s) : Mr. Harsha Peechara, Advocate for R-1 & 3
Mr. Shivan Desai along-with Mr. Shivshankar
Swaminathan, Advocates for Intervener

ORDER

O.A. No. 98/2022(WZ)

1. From the side of Applicant, learned Counsel Mrs. Norma Alvares has appeared.

2. From the side of Respondent Nos. 1 to 4, learned Counsel Ms. Manasi Joshi has appeared and apprised that reply affidavit would be filed after the outcome of M.A. No. 04/2023(WZ) in Original Application No. 478/2018.

3. From the side of Respondent No. 5/The Village Panchayat of Assagao, learned Counsel Mr. Somnath B. Karpe has appeared.

4. From the side of Respondent Nos. 6 & 7/Private Respondents, learned Senior Counsel Shri J.E. Coelho Pereira, along-with learned Counsel Mr. Vinod Korgaonkar have appeared.

I.A. No. 115/2022(WZ) in M.A. No. 03/2023(WZ)

5. This Application has been moved by the Confederation of Real Estate Developers Association of India (CREDAI)-Goa Chapter as an intervener praying for its impleadment as Party Respondent, praying there-in that the members of the association are carrying on business of construction and Real Estate in the State of Goa. The Applicant/The Goa Foundation had earlier filed Original Application No. 63/2022(WZ), which has now been converted into present Miscellaneous Application No.

03/2023, where the Applicant/Intervener had moved an application for impleadment on the premise that an adverse decision taken in the matter shall have a direct bearing on the rights of the members of the Applicant. The Applicant/Intervener is a body constituted to espouse the cause of its members as well as the other stakeholders in the industry. The Applicant/the Goa Foundation has challenged the interim reports submitted by the Forest Department, Government of Goa before this Tribunal on identification of the private forest land in the State of Goa with reference to Thomas and Araujo Committee Reports. This issue is pending for the last two decades. In pursuance to the directions of the Hon'ble Apex Court in the case of *T. N. Godavarman Tirumulpad Vs. Union of India*, the Government of Goa had constituted the Sawant Committee for identification of Government forest and private forest but the said Committee could not complete its task, hence the Karapurkar Committee was constituted for the said purpose. Both these Committees had adopted the directions issued by the Hon'ble High Court of Bombay, Panaji Bench in Writ Petition No. 162/1987 in the matter of *Sadanand Salgaonkar Vs. State of Goa*, as the criteria to be adopted for identification of the forest area, which was (i) 75% of the land must have forestry species (ii) the canopy density of the land should be minimum of 0.4% and (iii) the land should be a minimum of 5 hectares. The said reports were placed before the State Government and in turn, the same were also placed before the Hon'ble Supreme Court in T.N. Godavarman Tirumulpad's case.

6. In the year 2003, a Writ Petition No. 286/2003 was filed by the Goa Foundation before Hon'ble High Court of Bombay at Goa, alleging that despite classification of certain lands as private forest by the Sawant and Karapurkar Committees, permissions for development of land for non-

forest/development purposes were being granted by the State Authorities. The said Writ Petition was contested by the developers, contending that the State Level Committees had classified some survey holdings, as part forest and that development was being permitted in these parts, which were non-forest areas. The Hon'ble High Court of Bombay had issued certain directions, one of them being Direction No.3 as follows:

“(3) The First Respondent (State of Goa) if it has not already done, to demarcate the non-forest areas from the forest areas based on either Sawant Committee or Karapurkar Committee reports and shall submit the same to this court within six months from today.”

7. In furtherance of the order of the Hon'ble High Court dated 02.07.2003, the forest Department carried out survey in Goa for the purpose of demarcation of forest in pursuance to the Sawant and Karapurkar Committee's report and submitted various reports to the Hon'ble High Court of Bombay at Goa in Writ Petition No. 286/2003. In view of the facts that some areas in the State of Goa were not surveyed by the Sawant and Karapurkar Committees, hence in the year 2006, the Applicant (The Goa Foundation) had filed a Writ Petition No. 334/2006 before the Hon'ble High Court of Bombay at Goa, seeking directions to the State Government to complete the process of identification of forests and also identify degraded forest lands, which was later on transferred to the National Green Tribunal (NGT) and the same was re-numbered as Original Application No. 16(THC)/2013 and then as Original Application No. 478/2018.

8. On 30.06.2008, the Chief Conservator of Forests filed an affidavit before the Hon'ble High Court in the above Writ Petition No. 286/2003, stating that he had completed the exercise of survey and demarcation of 612 out of 640 land holdings, and a consolidated report with respect to the same was placed on record. The said report submitted by the Forest

Department, were challenged before the Hon'ble High Court in Writ Petition No. 673/2008 (filed by the Goa Foundation), on the ground that the reports submitted by the Forest Department were contrary to the orders of the Hon'ble High Court, since in these reports, some lands, which were classified as forest by the Sawant and Karapurkar Committees, had been omitted.

9. By order dated 15.10.2012 in Writ Petition No. 334/2006, the Hon'ble High Court directed the State of Goa to identify the balance private forest areas. Consequently, the State Government vide Notification dated 27.11.2012 constituted the North Goa Forest Division Committee (headed by V.T. Thomas) and South Goa Forest Division Committee (headed by F.X. Araujo). In pursuance of the directions of this Tribunal from time to time, the Forest Department of State of Goa filed interim reports before this Tribunal in Original Application No. 477/2018 and 478/2018, stating that total areas surveyed and demarcated as private forest were provisionally identified areas.

10. On 23.04.2018, a Review Committee was set up under the Chairmanship of Deputy Conservator of Forests, Working Division plan- (Ms. Deepshikha Sharma), which identified on loco the properties, which were partly reflected in the Sawant and Karapurkar Committee Reports as forests. The said Deepshikha Sharma Committee carried out the exercise of identification and demarcation of lands, which were identified as 'forest' by the Sawant and Karapurkar Committees. Vide order dated 12.10.2018, this Tribunal disposed of Original Application Nos. 477/2018 and 478/2018, which were earlier registered as Application Nos. 14(THC)/2013(WZ) and 16(THC)/2013/(WZ), and directed the Forest Department to complete the work by March, 2019 and file compliance report. The identification of additional area made by the Deepshikha

Sharma Committee was not accepted by the Government and vide Notification dated 23.08.2019, a Committee under the Chairmanship of Anthony D' Souza was set up to consider the objections to the Sharma Committee Report. The Report of the said Committee (headed by Anthony D' Souza) recommended exclusion of some areas identified by Deepshikha Sharma Committee. Thereafter, the Anthony D' Souza's report was accepted by the Government. Thereafter, reports of the Anthony D' Souza Committee as well as Deepshikha Sharma committee were filed before the National Green Tribunal (NGT) in Application No. 18/2023. Vide Notification dated 21.01.2020, the Government constituted a Committee under the Chairmanship of Conservator of Forests to review the identification of forests by Thomas and Araujo Committee and directed to submit its report by 10.03.2020. Vide order dated 18.08.2020 in Original Application No. 18/2013 (THC) (WZ) re-numbered as Original Application No. 479/2018, NGT confirmed the report of the Committee headed by Deepshikha Sharma and directed that an area of 41.20 sq. kms. demarcated by the Forest Department and 4.91 sq. kms. identified by Sharma Committee totaling 46.11 sq. kms., is confirmed and identified as private forest. The said order of NGT was challenged before the Hon'ble Apex Court by the State of Goa in Civil Appeal No. 01 of 2021, where-in vide order dated 01.02.2021, the Hon'ble Apex Court refused to interfere and dismissed the appeal.

11. The report, which was required to be submitted in compliance to the order of NGT dated 12.10.2018 (*supra*), was not filed by the Forest Department within the stipulated time, hence the Goa Foundation filed an Execution Application No. 21/2021, where-in the Forest Department sought extension of time to complete the exercise, which was granted. Finally vide order dated 30.11.2021, NGT disposed of the said Application

issuing a direction to the Forest Department to submit final report by 30.04.2022.

12. In pursuance to the order dated 30.11.2021, the Forest Department produced four interim reports, which are challenged by the Applicant/The Goa Foundation in the present proceedings.

13. It is further submitted that grave prejudice would be caused to some of the members of the Applicant/Intervener because when the Deepshikha Sharma Committee Report was confirmed by this Tribunal vide order dated 18.08.2020 passed in Original Application No. 479/2018, there was no representation on behalf of the stakeholders, who were adversely affected by the said Report. Some had raised their grievances before the Hon'ble Apex Court but many others did not have any resources to avail further remedies. The Applicant/Intervener apprehends that some of its members may potentially be aggrieved if they are not allowed to be represented in the present proceedings. The Real Estate industry is grappling with the issue of identification of private forest for the last 20 years. The Applicant has been challenging practically every report/action taken by the Forest Department, on account of which there has been a lot of uncertainty in the investment climate in the State of Goa. Apart from the members of the Applicant who would be directly affected, the Applicant/Intervener, as a body is in a position to assist this Tribunal to resolve the controversy. The State of Goa had issued an Office Memorandum to streamline the process of obtaining conversion *sanads* for lands, which were beyond the scope of forest identification criteria, which was challenged by the Applicant/The Goa Foundation in PIL Writ Petition No. 26/2022 before the Hon'ble High Court of Bombay at Goa, where-in the Applicants/Interveners had filed an Intervention Application, pleading that intervener represented the

interest of the stakeholders in the Real Estate Industry and vide order dated 26.11.2021, the Applicant/Intervener was directed to be impleaded in the said PIL Writ Petition. This indicates that the Goa Foundation acknowledges the relevance of participation of the Applicant/Intervener. Besides that, no prejudice would be caused by impleadment of the Applicant.

14. From the side of the Applicant/The Goa Foundation, it is stated by the learned counsel that reply to this application has been filed but the same is not been found on record, though the learned counsel has orally argued that the Applicant/Association had not appeared before the Review Committee to raise its grievances nor has the said association made clear as to who are the members of the said Association. Therefore, the said application should be dismissed.

15. After having heard both sides, we are of the view that there is likelihood of the Applicant/Intervener, being an Association of the Developers, who are involved in the construction and development of the Real Estate being adversely impacted if certain survey numbers, which are being sought to be got cleared as forest area, are actually allowed to be treated as forest area and the interim reports submitted by the State of Goa in that regard are quashed. Therefore, it would be appropriate if the said association is permitted to be impleaded and given opportunity of being heard.

16. Accordingly, we allow this application and direct the Applicant to implead the Intervener/Applicant as Respondent No. 4 within a period of one week and provide copy of the application to the newly impleaded Respondent, who shall file reply affidavit within a period of next two weeks thereafter.

17. From the side of John Alfredo Nazareth, H. No. 154, Bairro Alto, Assagao, Bardez, Goa and for Antonio Agnelo Nazare, H. No. 154, Bairro Alto, Assagao, Bardez, Goa, learned Senior Counsel Shri J.E. Coelho Pereira along-with learned Counsel Mr. Vinod Korgaonkar have appeared and state that they are owners of Survey Nos. 128/9 and 128/10 of Assagao Village, North Goa, which have already been delisted from the forest area and now the Applicant is seeking their inclusion as forest area. Therefore, their interest would be adversely affected, hence they should be allowed to be impleaded. No objection has been raised in regard to their impleadment from the side of learned Counsel for the Applicant, therefore, we direct the learned Counsel for the Applicant also to implead John Alfredo Nazareth and Antonio Agnelo Nazare as Respondent Nos. 5 & 6 within the same time period.

18. From now onwards, we shall treat the M.A. No. 03/2023(WZ) as leading case.

Put up this matter on 04.05.2023

Dinesh Kumar Singh, JM

Dr.Vijay Kulkarni, EM

March 14, 2023
Original Application No. 98/2022(WZ)
and other connected matters
P.Kr & SJ