

**BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTH ZONE, CHENNAI**

Application No 6 & 12 of 2013

Leo F. Saldanha

.... Applicant

Vs

Union of India & Others

.... Respondent

COMMON COUNTER FILED BY THE RESPONDENT

I, S.M.Somashekar S/o Late Shri Mantyaiah aged about 54 years, working as Chief Conservator of Forests (Central), in the Regional Office (Southern Zone), Ministry of Environment & Forests, Government of India, Kendriya Sadan, Koramangala, Bangalore – 560 034, do hereby solemnly affirm and state an oath as follows:

01. The respondent submits that with regard to Para- 7, It is respectfully submitted that as per Rule 33 of the Karnataka Forest Rules, 1969, the rules for management of district forests 'mutatis mutandis' apply to Amrut Mahal Kavals which mean and include the land assigned by the Government for the pasturage of Amrut Mahal cattle owned by the Government. It is denied that Amrut Mahal Kavals have been declared as district forests as per Rule 33 of the Karnataka Forest Rules, 1969.

02. The respondent submits that with regard to Para-13 to 15:

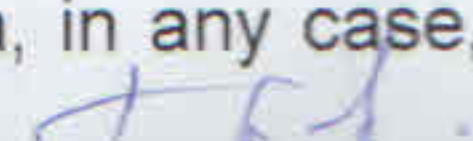
The contents of Para-13 to 15 are statements of facts. However, it may be submitted that the Great Indian Bustard is a


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Chief Conservator of Forests (C)
Ministry of Environment & Forests

critically endangered species. This area is a potential habitat of Great Indian Bustard.

03. The respondent further submits that With regard to Para-19: Part of the area allotted to various organisations has in fact been included in the list of deemed forests prepared in compliance of the order dated 12.12.1996 passed by the Hon'ble Supreme Court in WP(Civil) 202/1995. Areas which are having the characteristics of forests and identified as deemed forests irrespective of the ownership also require permission under Forest (Conservation) Act, 1980 for using them for non-forestry purposes.


04. The respondent further submits that with regard to Para-26 to 28: The contention of the petitioner is that, since the rules for the management of district forests mutatis mutandis apply to Amrut Mahal Kavals, the Amrut Mahal Kavals are District Forests and require prior approval under Forest (Conservation) Act, 1980 for diversion for non-forestry purposes. There is no specific order of the Government declaring Amrut Mahal Kaval lands as District Forests. There are many areas within the reserved and protected forests, which are grasslands and similar to Amrut Mahal Kavals. During the site inspection by the Regional Office of the Ministry of Environment and Forests, Southern Region, Bangalore on 6th August 2013, it was gathered that the area used to support and is even now also supporting wildlife such as Black buck, Hares, Sloth bear, etc. 1200 ha out of the Amrut Mahal Kaval area allotted to various organisations has in fact been included in the list of deemed forest prepared in compliance of the order dated 12.12.1996 passed by the Hon'ble Supreme Court in W.P. (Civil) 202/1995. Hence this 1200 hectares area, in any case,


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requires Forest clearance before it is put to non-forestry use and there is a case for examining the inclusion of remaining area also in the deemed forest as per the order of the Hon'ble Supreme Court since both the areas are similar. The State Forest Department in its counter affidavit maintained that 1200 hectares of land in Sy.No.343 of Varavukaval is included in the category of deemed forest (C&D land without any plantation but with Karnataka Forest Department) and stated that C&D class lands cannot be classified as forests as per conditions laid down by Hon'ble Supreme Court in WP (Civil) 202/1995.

The Hon'ble Supreme Court from time to time has issued guidelines to resolve such issues. Summary of the same is as below:

(I) Supreme Court of India in their order dated 12.12.1996 in the W.P. (Civil) No. 202/1995 in the matter of T.N. Godavarman Thirumulpad versus Union of India and Others inter-alia directed that "The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The term "Forest land", occurring in Section 2, will not only include "forest" as understood in dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."


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(II) Supreme Court of India in their said order dated 12.12.1996 further directed that "Each State Government should constitute within one month an expert committee to (i) identify areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such forest (ii) identify area which were earlier forests but stand degraded, denuded and cleared; and (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons".

(III) Supreme Court of India in their order dated 6.7.2011 in the IA No. 1868 of 2007 in the matter of Lafarge Umiam Mining Private Limited and Others in the Writ Petition (Civil) No. 202 of 1995 in the matter of T.N. Godavarman Thirumulpad versus Union of India and others inter-alia directed that exercise undertaken by each State/UT Govt. in compliance of their order dated 12.12.1996 wherein inter-alia each State/UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such "forest" and the areas which were earlier "forests" but stand degraded, denuded and cleared, shall be culminated in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the FC Act, 1980.

(IV) The Supreme Court in their said order dated 06.07.2012 further directed that if the project proponent makes a claim regarding the status of the land being non-forest, if there is any doubt, the site shall be inspected by the State Forest Department along with the Regional Office of the Ministry to

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ascertain the status of forests, based on which the certificate in this regard be issued. Therefore, the status of 9,473 acres of land as "forest" or "non-forest" is to be decided through joint inspection by the State Forest Department and the Regional Office of the Ministry, as per guidelines issued by the Supreme Court in Lafarge Judgment and interpretation of the Karnataka Forest Act and Rules framed thereunder.

05. The respondent further submits that with regard to Para-33, it is submitted that there is a violation of Environment (Protection) Act, 1986 in as much as some of the project authorities have started the work without clearance under Environment Protection Act, 1986.

It is therefore humbly requested that In view of the above foregoing submission, IN APPLICATION NO 6&12 /2013 the Hon'ble Tribunal may kindly pass such or further orders as it deems fit in the given circumstances of the case.

Place: Bangalore

Date: 28.10.2013



DEPONENT

S. M. SOMASHEKAR, I.F.S.
Chief Conservator of Forests (C)
Ministry of Environment & Forests
Regional Office, Southern Zone
Kendriya Sadan, 4th Floor
Koramangala, Bangalore-560 034

VERIFICATION

I, S.M. Somashekar, S/o Late Mantyaiah aged about 54 years, working as Chief Conservator of Forests (Central), in the Regional Office (Southern Zone), Ministry of Environment &

Forests, Government of India, Kendriya Sadan, Koramangala, Bangalore – 560 034, do hereby verify that the content of the paragraph 1 to 5 of the Counter Affidavit are true to my knowledge and information based on official records and are believed to be true on legal advice and that I have not suppressed any material fact.

Place: Bangalore

Date: 28.10.2013



DEPONENT

S. M. SOMASHEKAR, I.P.S.
Chief Conservator of Forests (C)
Ministry of Environment & Forests
Regional Office, Southern Zone
Kendriya Sadan, 4th Floor
Koramangala, Bangalore-560 034

Before the National Green
Tribunal.

Southern zone - Chennai.

Application No. 6 & 12 / 2013

Leo. F. Saldhana

— Applicant

— vs —

Union of India & others

— Respondent

Common Counter Filed by
Ministry of Environment
and Forests.

