

BEFORE THE NATIONAL GREEN TRIBUNAL AT CHENNAI

PRESENTATION FORM

APPLN No. 6 2013

Serial No. _____

District _____

Advocate _____

BETWEEN : LED SARDHANA

M/s. Holla & Holla

Advocates

Level 4, Prestige Nebula,

No.8, Cubbon Road,

Bangalore - 560 001.

AND

UNION OF INDIA & OTHERS

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BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI

Appl. No. 6 of 2013

Leo Saldhana

...Applicant

- Vs -

Union of India
Rep.by its Secretary to Govt.,
Ministry of Environment & Forests & Others

...Respondents

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Chennai

Date: 21.03.2013

Advocate for Respondent No. 13

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OBJECTION STATEMENT FILED BY THE RESPONDENT NO. 13 -**INDIAN INSTITUTE OF SCIENCE**

The respondent no. 13 abovenamed submits as under:

1. The above application is wholly false, frivolous, vexatious and not maintainable either in law or on facts. The application is not maintainable and is liable to be dismissed in limine.
2. The Applicant is challenging the allotment of land to various respondents including this respondent, which allotment was made way back in the year 2009. The allotment of land was made to Indian Institute of Science, the 13th respondent, on ²⁸⁻⁵⁻²⁰⁰⁹~~15-5-2009~~. Copy of the Government Order regarding the allotment of land is produced herewith marked **ANNEXURE R1**. The present Application has been filed in the year 2013 i.e., after a lapse of over 3 years after the allotment of the land and after the allottees have carried out various improvements and activities thereon and after crores of rupees of public fund has been expended for construction of compound wall, peripheral roads, renovation of dilapidated buildings, placement of orders for machinery, equipment etc. In fact, this respondent had inaugurated the Talent Development Centre for training of Government High School Teachers by the


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Chief Minister on 26.2.2011 which was widely publicized in the press. Section 14 of the National Green Tribunal Act, 2010 (hereinafter referred to as the Act) specifies that no application for adjudication of disputes shall be entertained by the Tribunal unless it is made within 6 months from the date on which cause of action arose. Having regard to the fact that the cause of action for the present application arose during the year 2009 when allotment of lands were made to various respondents including this respondent, the application is liable to be dismissed as being hopelessly barred of limitation.

3. A similar petition has been filed before the Hon'ble High Court of Karnataka at Bangalore in writ petition WP No.26144-147/2012. Copy of the said writ petition is produced herewith marked ANNEXURE R2. Copy of the objections filed by the Government of Karnataka in the said writ petition is produced herewith marked ANNEXURE R3. The Principal Bench of the National Green Tribunal has held in Appln.No.12/2011 that when a similar matter is pending before the High Court, the Green Tribunal must stay its hands. Copy of the said order is produced herewith marked ANNEXURE R4. Having regard to the fact that the writ Application is pending before the High Court of Karnataka at Bangalore, all further proceedings in the present Application are liable to be stayed, even in the event of this Hon'ble Tribunal coming to the conclusion that the Application is maintainable and that it is not liable to be dismissed as being barred by limitation.
4. Alternatively, it is submitted that even if the petition is not bared by limitation, having regard to the fact that the petitioners have kept quiet for over 3 years during which period this respondent has spent crores of rupees for setting up and development of the project on the lands in question and creation of third party interest by way of contract pertaining to civil works, supply of machinery, equipment, etc., the petition is liable to be dismissed on grounds of delay and laches and also on grounds of estoppel and waiver.
5. Several of the prayers are beyond the power, competence and jurisdiction of this Hon'ble Tribunal. The Application is liable to be dismissed on this ground also.



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6. This application is a replica of another application No.12/2013 filed by 'Environment support group'. The applicant herein is the coordinator and trustee of the other applicant as is evident from the very representation dated 1-2-2013 produced in Vol.II Paper Book II of this application. The present application is therefore liable to be dismissed.

7. This respondent (Indian Institute of Science - IISc for short) is one of the premier research institute and has the highest ranking amongst Scientific institutions of the Country. It is renowned Nationally and internationally for its academic excellence and research. It was established way back in the year 1909. It has more than 3400 students, half of whom are working for doctorate degree and has a faculty strength of more than 500, most of whom are reputed scientists of the Country, known Nationally as well as Internationally. It has nearly 40 different faculties covering wide variety of natural sciences as well as engineering sciences. It is also one of the foremost institutions in the Country to study the subjects of Ecology and Environment with a rigorous scientific methodology. Establishment of units such as Centre for Ecological Studies, Centre for Sustainable Technologies (formerly Centre for Application of Science and Technological to Rural Areas), Divecha Centre for Climate Studies and the formation of a Division of Earth & Environmental Sciences is a manifestation of the concern of the Institute for finding the best path of sustainable development. Scientists from IISc have provided and continue to provide valuable services at the National and International level concerning topics such as forestry, animal habitats, biodiversity, science and technology for rural applications and so on. The same scientists have examined several possible locations for the second campus of IISc and finally arrived at the present location near Challakere. The very obvious reason why this respondent undertook a survey of biodiversity of the campus was to work out strategies to protect and preserve the bio diversity of the semi-arid region even as they embark on a sustainable development of the region. The present campus of IISc is in Bangalore. The said campus has become insufficient to house its large body of students and research scholars as well as faculties. Further, no new research activities was possible having regard to the constraints of space. In view of the same, this respondent thought of setting up a second campus. In fact, Union budget of 2005 had allocated Rs.100 crores to this respondent for furthering research activities undertaken by it.

8. On the eve of IISc completing 100 years of dedicated service to the Nation, IISc Centenary Celebrations were organised. On 3.12.2008, the Hon'ble Prime Minister inaugurated the celebrations. The then Chief Minister of Karnataka lauding the work being done by the IISc acknowledged that the IISc was an important land mark in Bangalore and that its presence and contribution is a major factor of Bangalore being labeled the 'Science Capital and Knowledge Centre of India' and further that the research efforts of the IISc are reflected in the large number of publications of research articles amounting to around 1,000 per year. He stated that the State Government considers the IISc 'its crown jewel' and will support in all its future endeavours. He stated that since IISc intends to set up a second campus to expand its research and development activities, his Officers have already shown a couple of places to experts from IISc and offered to provide land for this purpose. He requested the Director of IISc to finalise the location so that the Government of Karnataka can grant the land at the earliest and that keeping the under development of the Central and Northern Karnataka in view, the State Government preferred to have the Second Campus of IISc in Central Karnataka. This was finally identified in Challakere Taluk of Chitradurga district.

9. In furtherance of the above commitment made by the Hon'ble Chief Minister to further the National interest, as indicated hereinabove, this respondent was allotted 1300 acres of land for its Second Campus and 200 acres of land for building quarters for staff, etc. by the Government of Karnataka as per Government order dated 13.6.2009. The said land situated at Survey No.47 in Khudapura Village, Nayakanahatti Hobli, Challakere Taluk, Chitradurga District was handed over to the IISc by the Tahashildhar, Challakere Taluk vide letter No.LNDCR.47/08-09 dated: 6.2.2010. The sanction of the land came with a conditions that (1) the said land should be used only for the purpose of establishing the second campus of the IISc; (2) the IISc shall start developmental activities within a period of two years; (3) the Institute should not alienate the said lands to third parties; (4) in the event the Institution does not require the lands, the same shall be brought to the notice of the Government through this authority and obtain prior permission of the Government with regard to further action; and (5) In the event of violation of

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any of the conditions stipulated above, without any notice, the granted lands shall be forfeited clear of all liabilities. Eversince then, this respondent has been in actual physical possession of the land which has been allotted to it. They have also taken a bulding in the neighbouring land on lease which belongs to the Sheep Farm of the State Government for carrying out various activities of the institute. Infact, in the buildings which existed on the said land, this respondent has already started Teachers Training program for Government High School Science Teachers which has been going on from the past two years. Over 2500 science teachers from all over India have been trained resulting in improving their quality of teaching which will ultimately benefit the children of the Country and this is the aim of this training programme. Further, the Central Schools like Navodaya and Sarva Shiksha Abhiyana are also seeking services of this respondent for training the teachers which are being proposed in this campus. It is pertinent to mention that Dr. Abdul Kalaam, former President of India, came and addressed the students in this very campus at Challakere. The compound wall, peripheral roads and the drains are at final stage of completion. Copies of few of the documents in this regard about the activities carried on by this respodent in its second campus at Challakere as well as some of the photographs in this regard are produced herewith collectively marked ANNEXURE R5.

10. It is submitted that in order to ensure that green power is available, great deal of research is being carried on by IISc on Solar Photo Voltaic and Solar Thermal Power Generation. IISc intends to have solar energy – both photovoltaic and solar thermal, large scale water harvesting and conservation studies, afforestation, atmospheric and climate research, earth sciences laboratory and so on. Each one of these address environmental and long term climate issues. All the employees who have been recruited for carrying out various activities are local youth from backward groups. The State Government has already funded Rs.8.50 crores to this respondent for a research project on Solar power to be conducted in this campus at Challakere on the land in question. This respondent also has already set up a small Climate Research Laboratory in this campus at Challakere which it intends to expand for which foreign funding has already been approved to the extent of Rs.60 to 70 crores, out of which a sum of Rs.5 crores has already been received. A GPS station is also being set up. There are proposals for seismic


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studies of this region. It is also proposed to erect Low Speed Wind Tunnels and a Astronomical Observatory. All these activities are absolutely vital for the Nation and Nation building and in fact towards maintaining and enhancing ecological development. In fact, a research paper from the Climate Research Laboratory (housed in this campus) has already been published in the reputed International Journal titled 'Current Science'.

11. The respondent No.13 in fact intends to develop the new campus on the said lands without obliterating the dignity or the original character of the landscape and its current inhabitants and therefore a rapid biodiversity survey was conducted by its students in the land allotted to it. In fact precious unnoticed biodiversity has been noticed only with the efforts of this respondent and this clearly highlights the role of the respondent in preserving such biodiversity. In fact, this respondent which is been in existence for more than 100 years, would not act irresponsible in the matter of environment or biodiversity.
12. The respondent No.13 has planted nearly 8000 trees in the lands which have been allotted. The respondent further plans to plant more number of trees on the said lands.
13. This respondent has already spent nearly Rs. 12 crores including the cost of the land and the preliminary works associated with the said land. A copy of the statement of expenditure is produced herewith as **ANNEXURE R6**.
14. In the light of the above, the respondents above named controvert the various false and frivolous allegations in the application as under:
15. Re Paragraph 7: The allegation that all Amrit Mahal Kavals are declared as District Forests as per Rule 33 of the Karnataka Forest Rules, 1969 is false. In fact, Rule 33 only states that the rules applicable to the management of District Forests would apply to Amrith Mahal Kavals. In fact there are no notifications issued by the state government constituting such lands as forest lands. These lands are meant for grazing of the cattle owned by the Government and not classified as forest lands.

16. Re Paragraph 8: The allegation that the Kurubas and Gollas from about 50 villages around these grasslands in Challakere Taluk are dependent on these pastures for grazing their cattle, sheep and goats is not admitted to be true and correct. These lands are meant for grazing of the cattle owned by the Government and not for grazing of the private cattle. Further in the year 1971 these lands were transferred to the Sheep Development Board. Further, the lands in question which have been allotted to these respondents are barren lands, which have not been utilised for several decades.
17. Re Paragraph 13: The allegation that the grass lands are potential habitats for critically endangered birds including Indian bustard lesser florican is not admitted to be true and correct.
18. Re Paragraph 14: The allegation that these birds are often found associated in the same habitats as blackbuck is a meaningless statement.
19. Re Paragraph 16: The allegation that the Amrit Mahal Kavals of Challakere Taluk of Chitradurga district constitute a critical component of the last few remaining flagship faunal species of grasslands ecosystems in India is false.
20. Re Paragraph 17: The allegation that during the period 2008-2010, the Government of Karnataka through the office of the Deputy Commissioner of the Chitradurga District began to divert almost all the Amrit Mahal Kavals in Challakere Taluk to a variety of urban, industrial, infrastructure development, research and defence related projects is not admitted to be true and correct. The allegation that the Applicant contends that absolutely no consultation with constitutionally empowered local bodies such as Panchayats and Nagarpalikas preceded this decision, nor was any consultation undertaken with Biodiversity Management Committees constituted per the Biological Diversity Act, 2002. Clearly, therefore, there was absolute violation of the Principle of Prior and Informed Consent is false.
21. Re Paragraph 20: Not relevant to this respondent as the matter is concerned with ISRO.

22. Re Paragraph 21: The allegation that a Notice NO.PCB/CTA/11/03 dated 12th April 2011 was issued by KSPCB to Occupier, Indian Institute of Science, Chitradurga, stating that "at present you are having guest house, canteen & training centre facility in the existing sheep & wool development centre along with quarters building & office building" is not admitted to be true and correct. In fact, the respondent no.13 did not receive any notice from the Karnataka State Pollution Control Board. In any event, the respondent no.13 is a responsible Institution aided by Government of India and will obtain all necessary approvals in connection with the project.
23. Re Paragraph 26: The allegation that the diversion of about 0273 acres of Amrit Mahal Kavals in Challakere Taluk without the permission of the Central Government results in a violation of S.2 of the Forest (Conservation) Act, 1980 in light of the aforementioned facts is false. In fact, the Amrit Mahal Kaval lands have never been declared as forest lands and hence the provisions of the Forest (conservation) Act of 1980 would have no applicability to the same.
24. Re Paragraph 27: The allegation that the diverted lands in question constitute "statutorily recognized forests" and also fall within the ambit of the dictionary meaning of the word "forest" is false.
25. Re Paragraph 28: The allegation that Amrit Mahal Kavals are statutorily recognized forests as per the applicable and relevant forest laws of Karnataka is false. The allegation that Rule 33 clearly enshrines the statutory recognition of Amrit Mahal Kavals as forest is false. The allegation that the fact that Amrit Mahal Kavals are statutorily recognized as forests as per the applicable Karnataka forest laws is confirmed by the explicit mention of Amrit Mahal Kavals in Paragraph 41 (relating to minimum extent of village forests) and Paragraph 142(9) (relating to general privileges applicable to the entire state) of the Karnataka Forest Manual (1976) is not admitted to be true and correct.
26. Re Paragraph 29: The allegation that the specific historical, floral and faunal characteristics of the Amrit Mahal Kavals imply that the diverted lands in question do fall within the dictionary meaning and purposive interpretation of

the word "forests" is false. The allegation that the distinctive flora, fauna (including more than one endangered species), and historical origins of the Amrit Mahal Kavals constitute them as forest in accordance with a linguistic and common-sense interpretation of the word "forest" in the Indian context is false.

27. Re Paragraph 32: The allegation that in the instant case, all the lands diverted constitute forest land as per Rule 33 of the Karnataka Forest Rules, 1969 is false.
28. Re Paragraph 33: The allegation that there has been gross violation of the statutory compliance norms as per the Environment Protection Act, 1986, the Environment Impact Assessment Notification, 2006 and 2009, Water Act, 1974, Air Act, 1981 and various other applicable laws including the Forest Conservation Act, 1980 and Biological Diversity Act, 2002 is false.
29. Re Paragraph 38: The allegation that Indian Institute of Science has commenced its project activities without at all conforming with any norms is false. The allegation that no applications whatsoever have been made by any of the agencies to comply with the applicable laws and norms is false.
30. Re Paragraph 39: The allegation that the State of Karnataka has diverted almost all of the Amrit Mahal Kavals of Challakere Taluk, Chitradurga District in Karnataka to non-forest and non-pastoral purposes without application of mind is false. The allegation that the proposed investments will directly and irreversibly affect the impacted communities and biodiversity of the area, especially the pastoral communities, whose livelihoods are intricately linked to the existence of these grasslands, is false. The allegation that the projects have commenced in blatant violation of all the applicable rules, norms, standards and statutes, evident from the fact that the Amrit Mahal Kavals have been blocked off to pastoral communities by building 28 kms long wall that fundamentally attacks their very Right to Live is false. The allegation that, that already several families have run into huge debts trying to find fodder for their cattle, several more are forced to sell their livestock to survive and there is widespread pain and agony suffered as a consequence of these illegal activities by the impacted communities is false.

31. Re Paragraph 40A: The allegation that the diversion of Amrit Mahal Kaval land in Challakere Taluk is in violation of the Forest (Conservation) Act, 1980 is false.
32. Re Paragraph 40B: The allegation that the diversion of land is in violation of the Public Trust Doctrine, the Principle of Sustainable Development, Principle of Intergenerational Equity, Principle of Prior and Informed Consent, etc. is false.
33. Re Paragraph 40C: The allegation that the respondents have not considered the fact that the Amrit Mahal Kavals are statutorily recognized forests as per The Karnataka Forest Act, 1963. The diversion of about 9273 acres of Amrit Mahal Kavals in Challakere Taluk without the permission of the Central Government is, therefore, in violation of S.2 of the Forest (Conservation) Act, 1980 is false.
34. Re Paragraph 40D: The allegation that the present clearances granted to Respondents 10-16 herein are also in comprehensive violation of T.N. Godavarman Thirumulkpad Vs. Union of India, AIR 1997 S.C. 1228 is false.
35. Re Paragraph 40E: The allegation that the respondents have not seen that the diversion of the Amrit Mahal Kavals will cause serious prejudice to the environment, ecology and to the local pastoral and agrarian communities who have no other source of livelihood is false.
36. Re Paragraph 40F: The allegation that the respondents have violated the Biological Diversity Act, 2002 in granting the impugned clearances is false.
37. Re Paragraph 40G: The allegation that the respondents have not considered the fact that the impugned clearances have been granted in violation of the National Forest Policy is false.
38. Re Paragraph 40H: The allegation that the respondents have not considered the fact that the Amrit Mahal Kavals are the main source of fodder for the cattle reared by the local population and the impugned diversion will result in



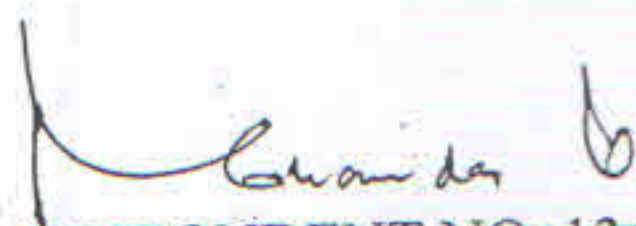
loss of their source of livelihood and is violation of rights guaranteed under Article 21 of the Constitution of India is false.

39. Re Paragraph 40I: The allegation that the statutory authorities have not seen the fact that respondents 10-16 have commenced construction / developmental activities without obtaining any clearance from the competent authorities is false.
40. Re Limitation: The allegation that as per the National Green Tribunal Act 2010 this application is well within the prescribed time is false. In fact, the present application is not filed within 6 months from the date of allotment of the said land in fact filed after a period of 3 years thus hopelessly barred of limitation.
41. All other allegations which are contrary to the foregoing and which are not specifically traversed hereinabove are denied as false.
42. In the light of the above, the application being barred of limitation and devoid of merits, the applicants are not entitled to any interim relief or for any of the prayers sought for in the above application.

WHEREFORE, the respondent prays that this Hon'ble Tribunal may be pleased to dismiss the above application with exemplary costs in the interests of justice.

BANGALORE

DATED 20.03.2013


RESPONDENT NO. 13

REGISTRAR
INDIAN INSTITUTE OF SCIENCE
BANGALORE - 560 012



ADVOCATE FOR RESPONDENT NO. 13

VERIFICATION

I, Dr.N.Mohan Das, S/o. Sri.A.Natesan aged about 56 years, Registrar, Indian Institute of Science, Bangalore, do hereby verify and declare that the statements made in para 1 to 42 are true to the best of our knowledge belief and information.



BANGALORE

RESPONDENT NO. 13

DATED 20.03.2013

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...Respondents

AFFIDAVIT

I, Dr.N.Mohan Das, aged 56 years, S/o. Sri.A.Natesan, Registrar, Indian Institute of Science, Bangalore-560012, do hereby solemnly affirm and state on oath as follows:

1. I am Registrar, Indian Institute of Science, Bangalore-560012, the Respondent No.13 herein and I know the facts of the case.
2. I say that the averments made in paragraphs 1 to 42 of the accompanying statement of objections are true to the best of my knowledge, information and belief.
3. Annexures - 21 to 26 are the true copies of the originals.

VERIFICATION

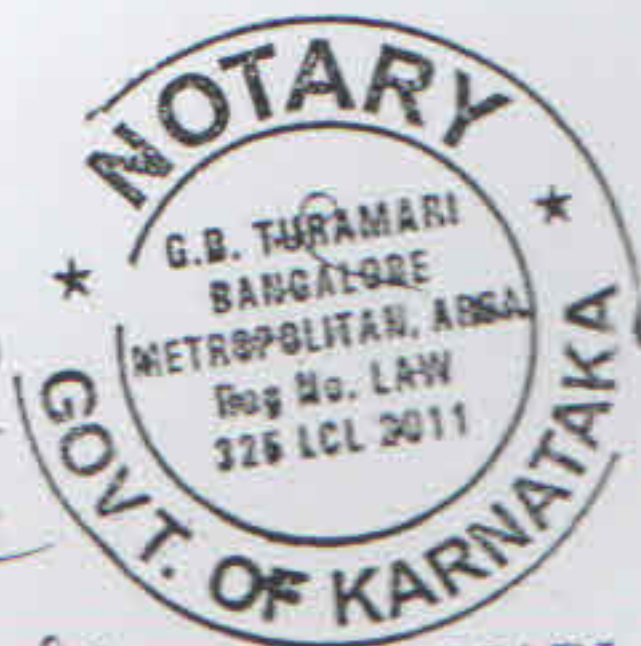
I, Dr.N.Mohan Das, the deponent herein, do hereby solemnly affirm and declare that this is my true name and signature and that what is stated above is true and correct to the best of my knowledge, information and belief.

Identified by me,

ADVOCATE

Place: BangaloreDate: 20-3-13

No. of corrections:



G.B. TURAMARI
ADVOCATE & NOTARY
No. 46/1, Behind Binny Mill,
1st Main Road, Ganganagar Extn.,
BANGALORE - 560 032

DEPONENT

SWORN TO BEFORE ME

G.B. TURAMARI

ADVOCATE & NOTARY

No. 46/1, Behind Binny Mill,
1st Main Road, Ganganagar Extn.,
BANGALORE - 560 032

Notary Stamps No. 1
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