

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Application No.154 of 2014 (SZ)
AND
M.A. No. 284 of 2014 (SZ)**

In the matter of:

1. D.V. Girish
Kalleshwara Estate
Kaimara P.O.,
Chikmagalur
Karnataka
 2. Shreedev Huilkere
Woodway Estate
Jakkanahalli Post
Chikmagalur
Karnataka
 3. S. Girijashankar
Sai Madhuvana Layout
Chikmagalur
Karnataka
- ... Applicants

AND

1. The Secretary to Government
(Environment and Ecology)
Department of Forest Environment and Ecology
Room No. 708, Gate 2, Multi Storied Building
Dr. Ambedkar Veedhi,
Bangalore – 560 001
2. The Principal Chief Conservator of Forests (Wildlife)
Aranya Bhavan, 2nd floor, Malleswaram
Bangalore – 560 003

3. The Additional Principal Chief Conservator of Forests
Field Director – Project Tiger – Shimoga Circle
Shimoga
4. The Deputy Conservator of Forests
Territorial Forest Division
Chikmagalur
Karnataka – 577101
5. The Conservator of Forests
Bhadra Wildlife Division
Chikmagalur, Karnataka – 577101 जयते
6. KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka
7. Prim Rose
Bagneheddal
Bayaravalli hobli
Chikmagalur District
Karnataka
8. Green Woods
Rashi Eco Tourism
Attigundi
ID Peeta Village
Jagara Hobli
Chikmagalur, Karnataka
9. Jhari Eco Stay
Rashi Eco Tourism
Attigundi
ID Peeta Village

Jagara Hobli
Chikmagalur, Karnataka

... Respondents

Counsel for Appearing:

Applicant: M/s. K. Thilageswaran, G. Balamanikandan,
P. Sundararajan, and M. Subha, Advocates

Respondents: Shri Devaraj Ashok, Advocate for respondent
Nos. 1 to 5; Shri Sanjay Upadhya for M/s. A.
Thayaparan, L.G. Sahadevan, Shri P.
Rajendrakumar, Advocates for respondent No. 6;
Shri Paul, Hudson Samuel, Advocate for
respondent No. 7; M/s. Thomas V. Peter and R.
Manohar, Advocates for respondent No. 8; M/s
Pitty Parthasarthy and S. Kolandasamy, Advocates
for respondent No. 9.

Appeal No. 5 of 2015(SZ)

In the matter of:

D.V. Girish
Kalleshwara Estate
Kaimara P.O.,
Chikmagalur
Karnataka

... Applicant

AND

1. The Member Secretary
National Tiger Conservation Authority
Ministry of Environment and Forests
Government of India
Annexe No. V, Bikaner House
Shajahan Road, New Delhi 110 011
2. The Principal Secretary to Government
Forest, Ecology & Environment Department

Room No. 448, 4th floor
M.S. Building, Bangalore - 560 001

3. The Secretary
Revenue Department
Government of Karnataka
Multistoreyed building
Ambedkar Veedhi
Bangalore
4. The Principal Chief Conservator of Forest
Aranya Bhavan
Malleswaram, Bangalore
5. The Deputy Commissioner
Chikamagalur District
Chikamagalur – 577 101
Karnataka
6. The Conservator of Forests
Bhadra Wildlife Division
Chikmagalur, Karnataka – 577101
7. The Member Secretary
Karnataka Pollution Control Board
“Parisara Bhavan”
49, Church Street
Bangalore – 560 001
Karnataka
8. KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka

... Respondents

Counsel Appearing:

Applicant: M/s. M. Radhakrishnan, P. Sundararajan and
Vetri Selan, Advocates.

Respondents:

Smt. C. Sangamithirai, Advocate for respondent
No. 1; Shri Devaraj Ashok, Advocate for
respondent Nos. 2 and 6; Shri Thirunavukarsu,
Advocate for respondent No. 7; Mr. Sanjay
Upadhaya for M/s. A. Thayaparan, L.G.
Sahadevan, Shri P. Rajendrakumar, Advocates

R.A. No. 1 of 2015 in Appeal No. 5 of 2015 (SZ)

In the matter of:

KSS Hotels and Resorts Pvt Ltd
Trivik Chikamagalur
Chinnabi Khan Estate
Channagondanahalli Village
Vasatre hobli, Chikamagalur District
Karnataka

.... Appellant/Respondent No. 8

AND

1. D.V. Girish
Kalleshwara Estate
Kaimara P.O.,
Chikmagalur, Karnataka ... Respondent No. 1/Appellant
2. The Member Secretary
National Tiger Conservation Authority
Ministry of Environment and Forests
Government of India
Annexe No. V, Bikaner House
Shajahan Road, New Delhi 110 011

3. The Principal Secretary to Government
Forest, Ecology & Environment Department
Room No. 448, 4th floor
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 4. The Secretary
Revenue Department
Government of Karnataka
Ambedkar Veedhi, Bangalore
 5. The Principal Chief Conservator of Forest
Aranya Bhavan
Malleswaram, Bangalore
 6. The Deputy Commissioner
Chikamagalur District
Karnataka – 577 101
 7. The Conservator of Forests
Bhadra Wildlife Division
Chikmagalur, Karnataka – 577101
 8. The Member Secretary
Karnataka Pollution Control Board
“Parisara Bhavan”
49, Church Street
Bangalore – 560 001
- ... Respondent Nos. 2 to 8/
Respondent Nos. 1 to 7

Counsel for Appearing:

Review Applicant : M/s. Thayaparan and P. Rajendrakumar,
Advocates.

Respondents : M/s. M. Radhakrishnan, P. Sundararajan and
M. Vetriselvan, Advocates for respondent
No. 1(Appellant in Appeal No. 5 of 2015

(SZ); Smt. C. Sangamithirai, Advocate for respondent No. 2; Shri Devaraj Ashok, Advocate for respondent Nos. 3 to 7; Shri Thirunavukkarasu, Advocate for respondent No. 8

JUDGMENT

Present:

1. Hon'ble Shri Justice M. Chockalingam
Judicial Member
2. Hon'ble Prof. Dr. R. Nagendran
Expert Member

Dated, 09th April, 2015

(Hon'ble Shri Justice M. Chockalingam, Judicial Member)

Application No. 154 of 2014 (SZ):

This Application has been filed by the applicants who claim to be environmental activists residing in Chikmagalur, State of Karnataka seeking direction against the respondents/administrative authorities to take appropriate action with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayanagiri hill areas in the State of Karnataka. The facts in brief as found in the Application are summarised below:

2. Bababudangiri and Mullayanagiri are hill areas in the State of Karnataka which are located within 10 km from the boundary of Bhadra

Tiger Reserve (Tiger Reserve) in Chikmaagalur district. These mountain ranges are the offshoot and integral part of the Western Ghats, which is a global biodiversity hotspot and are located within Ecologically Sensitive Zone of Tiger Reserve and it is one among the 25 bio-hotspots in the World.

3. These mountains are vital part of the active wildlife corridor that connects the Tiger Reserve with other reserve forests such as Masagali, Udev, Churche Gudda, Gangooru, Thimmapura, Yemme Dhoddi etc. There has been scientific documentation on regular movement of endangered animals such as tiger, leopard, porcupine, sambar and so on in this area and it is a habitat for several rare species of birds such as Rufous Bellied Eagle, Falcons, Blue Rock Thrush etc. According to Birdlife International UK, Lesser Kestrel, White Bellied Short Wing categorized as one of the threatened bird species is found in this area. This landscape is also an important catchment area for several perennial streams which flow through the Tiger Reserve and are the tributaries of River Bhadra feeding water to thousands of people downstream.

4. However, a number of unauthorized and illegal constructions are being carried out in these hill areas affecting the biological nature and the environment. A number of resorts are under construction and these constructions either block or divert the fresh water streams which flow through the Tiger Reserve on the higher reaches of the mountains.

These hill areas are also the water catchment areas of the habitations situated in the foot of the hills but the constructions are affecting the fresh water ecosystem in the entire catchment area by reducing the water flow, altering the vegetation downstream and reducing the water availability for agriculture and basic sustenance of people's livelihood. These resorts also alter the land use pattern by taking up large scale land excavation and construction, destabilizing the fragile slope in the 'shola' grassland ecosystem over the mountains.

5. The applicants sent various representations to the respondents who are having statutory duty to curtail those encroachment and illegal constructions which have neither been considered nor replied with.

6. Appeal No: 5 of 2015: This Appeal is converted from Application No.53 of 2015 filed by the first applicant herein who filed the Application No.154 of 2014 above by the Orders of this Tribunal dated 20.02.2015. The facts of the case adduced from the averments made in the Appeal Memorandum are as follows:

7. The appellant who is one of the applicants in Application No. 154 of 2014 (SZ) an environmental activist having come to know about the construction of a large scale commercial resort with an investment of over Rs.45 Crore by respondent No.7 at the base of Mullayangiri hill (the highest peak in Karnataka) in survey No.344 (3.25 acres) and survey No.216 (3.25 acres) of Channagondanahalli village of Vasatre

hobli in Chikmangalur district, Karnataka, made an appeal along with one Shreedev Hulikere and one Girijashankar made an appeal on 21.02.2013 to respondent No.4 and other authorities of the State of Karnataka to cancel the permit granted to respondent No.8. In the said appeal, the appellant *inter alia* stated as follows:

“In addition to large scale excavations and erection of huge concrete structures, the perennial streams flowing through the ever green shola forest (which are common property resources) leading to Bhadra Tiger Reserve have been diverted to meet the unsustainable demands of the resort. The wildlife movements in the area including that of tiger are being disturbed due to the usage of heavy machinery and movement of heavy motor vehicle supplying raw materials to the site and expansion of road leading to the resort. More than 100 resident labourers employed in the construction work at this site have been repeatedly illegally entering the nearby evergreen shola forests and over extracting wood from the deemed forest. The Mullayangiri hill range is part of the Western Ghats and is located within three kilometers from the Bhadra Tiger Reserve. The resort construction site falls well within the Buffer Zone of Bhadra Tiger Reserve and the landscape around harbors a variety of rare, endangered and endemic wildlife including species like Tiger, leopard, white bellied short wing (bird), Nyctilbatrachus dattatreyaensis (frog) etc. This range is also of great religious significance to the local people. In addition, several perennial streams also take birth in this high altitude shola grassland forest which feed river Bhadra supporting innumerable life systems

dependent on these fresh water streams down the valley”.

8. A copy of the said appeal appears to have been forwarded to respondent No.1, National Tiger Conservation Authority (NTCA), New Delhi. Respondent No.1 *vide* its letter dated 01.04.2013 addressed to the Chief Wildlife Warden, Government of Karnataka, Bengaluru requested a factual status report on the subject matter of the appeal of the appellant dated 21.02.2013 before the respondent authorities for further processing in the matter. No action whatsoever was taken by the respondent No.2 on the request of the respondent No.1. Respondent No.2 ought to have sent a factual status report regarding the proposed construction of resorts by the respondent No.8 to the respondent No.1. The appeal of the applicant appears to have been forwarded to the respondent No.6 by the respondent No.4 instead of the respondent No.2. Respondent No.6 who is not competent to decide the question of grant or cancellation of permit for construction of the resorts in the aforesaid survey nos. by the respondent No.8 passed an order dated 07.06.2013 addressed to the applicant and two others, who made the aforesaid appeal to the respondent No.4. The said order was served on the applicant through his counsel during the course of hearing of Application No.154 of 2014 (SZ) by the Tribunal on 11.02.2015. Immediately on receipt of the said order dated 07.06.2013 passed by the

respondent No.6 on the appeal of the applicant dated 21.02.2013 made to the respondent No.4 as well as the respondents 2 and 5, the appellant filed this appeal against the order dated 07.06.2013 served on the applicant on 11.02.2015.

9. M.A. No. 284 of 2014 in Application No. 154 of 2014 (SZ):

The Applicants in Application No. 154 of 2014 have filed this M.A. No. 284 of 2014 seeking an amendment to the prayer clause in Application No. 154 of 2014 by substituting the expression **“therefore the applicants pray that the Hon’ble Tribunal be pleased to restrain respondents 6 to 9 from further proceedings with the construction of resorts in Bababudangiri and Mullayangiri hill ranges adjacent to Bhadra Tiger Reserve in Chickmagalur District, State of Karnataka”**, for the expression **“Therefore, the applicants pray that this Hon’ble Tribunal may be pleased to direct the respondents to take appropriate action on the representation made by the applicants dated 16.02.2012 with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayangiri hill areas in the State of Karnataka within the time frame that may be fixed by this Hon’ble Tribunal and thus render justice”**.

10. R.A.No.1 of 2015 (SZ) in Appeal No.5 of 2015 (SZ):

This is a review Application filed by the respondent No.8 in Appeal No.5 of 2015 on conversion of the Application No.53 of 2015 by an order dated 20.02.2015 passed by this Tribunal to review *ibid* orders.

11. As seen above, the applicants who claim to be environmental activists in Chickmagalur District in the State of Karnataka have filed the Application No. 154 of 2014 seeking a direction against the respondents to take appropriate action on their representation made on 16.02.2012 alleging encroachment and illegal constructions made in Bababudangiri and Mullayangiri hill areas in the State of Karnataka. On entering appearance, the respondents have filed their replies. Pending enquiry of the said Application, the applicants filed M.A.No. 284 of 2014 seeking an amendment of the relief clause in Application No. 154 of 2014. Aggrieved over an order made by the Conservator of Forest (CoF) and Director, Bhadra Wild CAT C, Chickmagalur Division, Chickmagalur dated 07.06.2013, the 1st applicant in Application No. 154 of 2014 filed an application which was converted into Appeal No. 5 of 2015.

12. On admission, the 8th respondent in Appeal No. 5 of 2015 (SZ) therein and 6th respondent in Application No. 154 of 2014 (SZ) filed a Review Application which was taken on file as R.A. No. 1 of 2015. Since the questions that arose in all the above proceedings are inter-

connected and also on the same subject matter, all were taken up for joint enquiry. On the pleadings placed by the parties, the following questions were formulated:

13. Application No. 154 of 2014:

(i) Whether the applicants are entitled for a direction to the 1st to 5th respondents to consider their representation dated 16.02.2012 with regard to the encroachment and illegal constructions made in Bababudangiri and Mullayanagiri hill areas in the State of Karnataka within a time frame.

14. M.A. No. 285 of 2014 in Application No. 154 of 2014:

(i) Whether the application seeking an amendment of prayer in Application No. 154 of 2014 filed by the applicants has to be ordered.

15. Appeal No. 5 of 2015:

(i) Whether the appeal is maintainable on the question of jurisdiction for all or any of the reasons putforth by the appellants.

16. R.A. No. 1 of 2015 in Appeal No. 5 of 2015:

(i) Whether the Review Application is maintainable and has to be allowed.

17. The arguments advanced by the learned counsel for the applicants, the appellant and also the respondents are heard. All the

materials made available were looked into. The Tribunal paid its anxious consideration on the same.

Application No. 154 of 2014:

18. The only grievance ventilated by the applicants in this Application is the non-consideration of their representation dated 16.02.2012 with regard to the encroachment and illegal constructions being made in the hill areas of Bababudangiri and Mullayanagiri in the State of Karnataka and hence they have sought for a direction to the respondents to take appropriate action. A perusal of the representation dated 16.02.2012 as found in Sl. No. 9 (Page No.37) in the typeset of papers filed by the applicant would indicate that the same was addressed by the applicant to the Chief Conservator of Forests (CCF), Field Director, Project Tiger, Shimoga Circle, Shimoga who is shown as 3rd respondent in Application No. 154 of 2014. There is nothing to indicate that any copy of the same was addressed to the other respondents therein.

19. Pointing to the representation made by the applicants, the learned counsel for the applicant would submit that after giving full description of the location of the said hill area within 10 km of the boundary of Bhadra Tiger Reserve (Tiger Reserve), ecological sensitivity, native bio-diversity, fresh water eco-system in a catchment area, by the said representation the applicants have made a request for

immediate action to halt the construction in Bababudangiri and Mullayanagiri hill range adjacent to the Tiger Reserve. It was specifically stated therein that the construction of numerous resorts would involve opening of new area, cutting of trees, construction of roads, power lines, pipelines etc., which would lead to destruction, fragmentation and alteration of natural habitat in the area violating the Forest Act and Wildlife Act and in view of ecological importance of the said hill range which is located next to the Tiger Reserve and its significance from larger social welfare perspective it becomes necessary to protect the sensitive and fragile Western Ghat ecosystem. But the authorities have not exercised any care to consider the representation and take any appropriate action on that regard and hence it becomes necessary to issue a direction to the respondent/authorities to initiate action against the other respondents who have been carrying on the construction activities in violation of law and without obtaining any permits and licenses from the authorities concerned.

20. Countering the above contention, the learned counsel for the 1st to 5th respondents who are the authorities would submit that the application has got to be dismissed since it is much beyond the period of limitation under the National Green Tribunal (NGT) Act, 2010 and the relief sought for is beyond the scope of Sections 14, 15 and 18 of the NGT Act, 2010. The application is not maintainable in facts and law and

apart from that the application has got to be dismissed for the suppression of the material fact, namely, the subsequent representations made by the same applicants to the respondent authorities and appropriate order made thereon.

21. Vehemently opposing the application, the learned counsel for other respondents who are appearing for the resorts against whom allegations of encroachment and illegal constructions are made would submit that the allegations of encroachment on an ecologically sensitive area of the Western Ghat of Tiger Reserve and illegal constructions are thoroughly baseless and unfounded. The constructions are neither unauthorized nor irregular in any manner since they are not made within the legally protective areas or the buffer zone or ecologically sensitive areas, reserve forests or even on a deemed forest land. Pointing to the documents placed, the learned counsel would submit that the land in Survey Nos. 216 and 344 in which the said resort was originally built was a coffee plantation which was purchased on 18.06.2010 shown under Annexure I. The conversion of 3.25 acres of the said land was sought for from the Deputy Commissioner, Chickmagalur District before starting the construction work in the year 2011. Another permission was sought for on 08.09.2011 for the land in second Survey No. 344. The Karnataka State Pollution Control Board (KSPCB) has duly granted Consent for Establishment (CFE) on 27.02.2013. The office of the

Executive Engineer has given the sanction order for electric power connection on 28.12.2012 shown under Annexure 14. The KSPCB has also given the consent to expand by an order dated 21.08.2013 and the concerned *Panchayat* Development Officer has granted business license on 02.06.2014 which was made based on an approved plan sanctioned by the village *panchayat*. It is pertinent to point out that the said ecotourism facility/resort also conformed to the EIA Notification, 2006 particularly under Entry 8 (a) of Schedule I of the above Notification. The ecotourism facility/resort is located on the private land and situate at about 5.8 km away from the boundary of the Tiger Reserve which is confirmed by the State regulatory and competent authorities as per the forest records. Even as per the affidavit of the 1st to 5th respondents, the facility is more than 4 km from the Tiger Reserve, 2.8 km from the ecologically sensitive area which is excluded from Kasturi Rangan Report which formed basis of the Ministry of Environment and Forests Notification dated 14.03.2014 declaring ecologically sensitive zones in the Western Ghat outside the buffer zone and more importantly the said activity is a regulated activity and not a prohibited one. When a detailed consultative process was adopted by the State Government in declaring the buffer zone/area of the Tiger Reserve, all the applicants have been parties to the process of identifying the villages that should fall within the ecologically sensitive

areas and the same is evidenced by the proceedings of the meeting dated 20.09.2011 shown under Annexure 9. The applicants have concealed the facts and thus they have not come before the Tribunal with clean hands. The eco-tourism facility is not only a legal activity but it is even permissible inside a protected area subject to sections 28 and 33 of the Wildlife Protection Act, 1972. No guidelines, notifications or court orders are currently applicable prohibiting eco-tourism or its facilities if carried out in accordance with law. While the respondents have fully complied with all statutory requirements and undertake to adhere to all conditions imposed hitherto by regulatory and statutory authorities, the applicants cannot have any grievance to ventilate and thus all the allegations are unfounded. Added further the learned counsel that the applicants have failed to raise any substantial question on environment much less any specific violation of any environmental law or norm by the respondents. Though the applicants have pleaded that the construction made by the respondents are unauthorized, illegal and by encroachment within the Tiger Reserve and eco-sensitive zone of the Western Ghats, they have not placed a single evidence to prove the same. On the contrary, the respondents have placed all the materials for undertaking the construction which the respondents obtained from various departments which were granted after spot inspections and physical verification carried out by the officials of the Forest Department. All these

would be indicative of the fact that the respondents have not violated any provision of law as contended by the applications and hence the application has got to be dismissed.

22. Admittedly, the applicants made the representation on 16.02.2012 to the 3rd respondent, Deputy Conservator of Forests alleging that construction of numerous resorts if allowed would lead to ecological degradation. The averments there were as generic as they could be. They did not make any specific complaint or indicate any violation of law against the construction activities of any specific resort in particular or any one of the respondents shown in the application. However, it cannot be disputed that the cause of action for the application first arose on 16.02.2012, the date of representation made to the Deputy Conservator of Forest. Invoking the original jurisdiction of the Tribunal, the applicants have filed this application. Hence, the applicants must plead and raise the following: - (a) it should be a civil case, (b) various substantial questions relating to environment or enforcement of any legal right relating to environmental issues and (3) such questions arise out of implementation of the enactments specified in Schedule I of the NGT Act, 2010. Section 18(2) of the NGT Act, 2010 provides the details in regard to locus and character of an applicant who is entitled to move the Tribunal by filing an application for the grant of relief or compensation or settlement of dispute. Section 18 (2) is worded by the

Legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. The expression 'substantial question relating to environment' or 'enforcement of any legal right to environment' cannot be interpreted so generically that it would even include a direction to the respondent authorities to take action against other respondents when there are no specific allegations or violations are made.

23. Speaking on the period of limitation for filing an application before the NGT, section 14 of the NGT Act, 2010 reads as follows:

“14. Tribunal to settle disputes.- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such disputes first arose;

Provided that the Tribunal may, if satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days”.

24. The instant application was filed on 30.05.2014 long beyond the limitation period as stated above. What is all stated in the application is that the application is being filed within the period of limitation and no more averments are made and no explanation is forthcoming. The only explanation tendered by the learned counsel for the applicants is that though the representation was made on 16.02.2012, the authorities have not taken any action and so long no action is taken, the application can be well maintained since the cause of action would continue. Even if his contention has got to be accepted, the applicants are not entitled for the relief for more reasons than one.

25. From the documents made available, it could be seen that the 1st representation on the strength of which the instant application was filed was made by the applicants on 16.02.2012. On 21.02.2012, all the three applicants sent a letter addressed to the PCCF, Karnataka, the 2nd respondent herein appealing to cancel the permit for construction of the resorts by the 6th respondent in Survey Nos. 344 (3.25 acres) and 216 (3.25 acres) in Channagondanahalli village of Vasatre hobli in Chickmagalur District. Equally, the applicants sent a communication dated 25.02.2013 to the PCCF, Forest, Ecology and Environment Department, Karnataka making a request to refrain from permitting the resorts in Bababudangiri and Mullayanagiri hill range. A perusal of these two communications made by the applicants to the authorities would clearly

indicate that they have reiterated the very same grievance which they originally made in the representation dated 16.02.2012. It is pertinent to point out that the applicants have not revealed anything about those communications which were made after the 1st representation dated 16.02.2012 and before filing the instant application, but on the very same subject matter. The Deputy Inspector General, National Tiger Conservation Authority (NTCA) of the MoEF, on receipt of a copy of the representation dated 21.02.2013 stated *supra* has sent a communication dated 01.04.2013 to the Chief Wildlife Warden, Government of Karnataka, Bangalore to furnish factual status for further process in the matter. The Principal Secretary to Government, Forest, Ecology and Environment Department, Government of Karnataka, Bangalore, applicants issued a direction to the PCCF, the 2nd respondent herein to take suitable action by considering the same in accordance with rules in that regard. Pursuant to the above direction, an order came to be passed by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur, the 5th respondent herein as seen in Annexure 5 filed by the 1st to 4th respondents. It would be more apt and appropriate to reproduce the order which will suffice to answer the allegations levelled against the respondents which reads verbatim as follows:

“In the letter vide Ref.(1) above, as you have been informed that M/s. K.S.S. Hotel & Resorts Company have constructing the resorts in the

land in Sy.No.216 and 344 situated at Channagndanahalli village, Vasthere Hobli, Chickmagalore Taluk ; and due to this, causing problem to wild lives; and hence in this regard it was notified to submit a report to the Asst. Conservator of Forests, Bhadra Wild life Sub-Dvn., Lakkavalli/ Chickmagalore, by making spot inspection of the above said place, in this regard.

Accordingly as per his report in the letters vide Ref.(2) & (3) above, as per order of Buffer Project reserved area of Bhadra life CAT C, vide No. FEE/122/ FWL/2009 dated :29-01-2010; and corrigendum order dated : 24-02-2011 in No: FEE/122/ FWL/2009; the date : 29-10-2010 is amended as 29-01-2011; the said village is not coming within the jurisdiction of Buffer Zone; and the proposal of Eco Sensitive Zone by preparing the same and submitted to the Government for its approval; and even the village of Channagondanahalli village did not mention there itself also. This village is coming in the jurisdiction of Chickmagalore Regional Division.

In continuation of the same, in respect of the matter as you have been informed, the Asst. Conservator of Forests, Bhadra Wild Life Sub-Dvn, Chickmagalore, has made spot inspection and inspected the area by visit to it, where construction work of the said resorts made by M/s. KSS Hotels & Resorts Company; and accordingly the construction work is already completed at 75% and when enquired the manager, who doing construction work, it is stated that the land in Sy.No.216 and 344 of Channagodanahalli, is being Hiduvali land; and M/s. KSS Hotels & Resorts have purchased it and registered the same in its name; and they had

submitted an application to the Hon'ble Deputy Commissioner for land conversion of the above said land; and they got land conversion of the said land etc. As informed by him. (for the construction of resorts in the concerned area, got attested by preparing sketch map of the said spot from Tahsildar, Chickmagalore; and also for commercial purpose by preparing above said sketch map got a report in this regard from Asst. Director of City planning, Chickmagalore; and Karnataka State Pollution Control board, Chickmagalore; and also from Hon'ble Deputy Commissioner, Chickmagalore, respectively and they have issued conditional permit in this regard, etc. as stated by himself).

In continuation of the same Range Forest Officer, Muttodi Divisional range, Muttodi, he informed that due to the construction of resort made by them, it will cause problem to the wild lives and effected on the environment etc. stated in the notice dated 6-8-2012 issued and informed to M/s.KSS Hotels and Resorts in this regard. Even the said resort company that they have stated to take suitable action in this regard by putting Sewage Plant in not causing any harm to the environment, not giving chance to the sound pollution and not in causing water pollution and also not causing any problem to the wild lives due to their resort.

The area constructing the above said resorts is of GPS reading as N: 13 23' 32.2" E:-75 41' 23.4'; and Bhadra Wild CAT C preserved area is with a distance of 5.8 km from D line of Seegekan. It is found that there are constructing very big buildings in more quantity in the said area constructed by the above said K.S.S. Hotel and Resorts in the said area and hence for that reason

there is a possibility of creating hurdle to the walking of wild animals in the said area. This area is a reservoir of streams water flowing in the said Bhadra Wild CAT C protected area; and the garbage and water if leaved to flow without refining the same, which are using in the said resort, all these made effect directly and there is a chance to be flow such dirty water in the said Bhadra Wild CAT C prohibited area. Therefore it is hereby informed that it will be taken care in not causing any problem in such above manner from this Resort in this regard". जयते

26. A reading of the above order would clearly indicate that the said village in which the project is undertaken is not coming within the jurisdiction of Buffer Zone but under the jurisdiction of Chickmagalur Division. On inspection, it was found that the construction work was already completed by 75%. A part of the land was purchased and registered in the name of the respondent/resorts and the remaining land was got by the 6th respondent on conversion on an application made to the Deputy Commissioner for Land Conversion. The 6th respondent had obtained other necessary permits from the concerned authorities. The resort company has also undertaken to take suitable action by putting up the Sewage Treatment Plant (STP) and also measures to prevent noise and water pollution and any problem to the wildlife. It is pertinent to point out that the authorities while concluding the order stated that it would take care to ensure that no problems are created in any manner. In the

face of the above detailed order, it would be futile to contend that no action was taken on the representation of the applicants.

28. The learned counsel for the applicants would submit that the original representation made on 16.02.2012 was not acted upon and not even been referred to in the above order and hence a direction has got to be issued to take necessary action on the representation dated 16.02.2012. The Tribunal is unable to notice any substance in the above contention. It is true that in the above said order there is no reference in respect of the 1st representation dated 16.02.2012, but as pointed out earlier, the representation made to both the authorities on 21.02.2013 and 25.02.2013 were made by the very same applicants and in respect of the complaints on the same subject matter. Hence, the applicants cannot have any grievance to state the 1st representation dated 16.02.2013 was not acted upon since it merged with other two representations dated 21.02.2013 and 25.02.2013. Again, it has to be pointed out that having suppressed the later representations which were actually acted upon, the applicants cannot be permitted to state that the original representation was not acted upon. Equally, the contention of the applicants that the copy of the order dated 07.06.2013 made by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur was not served upon the applicants has to be rejected in view of the fact that it is indicated in that order that it was addressed to all the three

applicants and was also despatched on 17.06.2013. The suppression of the later representations dated 21.02.2013 and 25.02.2013 and order made thereon by the applicants in the application would cast a doubt that they were purposefully made so and if made it would be against them. The applicants have chosen to file the application on the strength of the 1st representation dated 16.02.2012 taking advantage of the fact that the same was not referred to in the order dated 07.06.2013. Hence, it has got to be concluded that the 1st representation was merged with the other representations dated 21.02.2013 and 25.02.2013 which were considered and after passing the order, they were served upon the applicants. Thus the case of the applicants that their representation dated 16.02.2012 was not acted upon is baseless, unfounded and worth to be ignored.

29. The learned counsel appearing for the resorts pointed to necessary documents to show that the lands in question do not come under the Buffer Zone of the Tiger Reserve as could be seen under Annexure 12 and 13. The KSPCB has granted the CFE as found in Annexure 10. The electrical power supply was granted as shown in Annexure 14. The KSPCB granted the consent for expansion shown under Annexure 16. The Panchayat Development Officer has given business license shown under Annexure 21. The same was based on the approval plan sanctioned by the Panchayat shown in Annexure 22.

Equally, the 7th respondent has also filed his documentary evidences such as permissions and licenses obtained. In view of the permissions, licenses, CFE etc., granted by the respective authorities, it cannot be stated that the respondents are carrying on illegal construction or violating any of the provisions of law. If the applicants were really aggrieved by the grant of those permissions, licenses, CFE and other approvals, they could have questioned the same, if so advised, in accordance with law. But, the applicants have not challenged any of those permissions, licences, CFE etc., in this proceedings.

30. Pending the Main Application No. 154 of 2014, the applicants have filed M.A. No.284 of 2014 under rule 16(7) of the NGT (Practices and Procedure) Rules, 2011 to amend the prayer in Application No. 154 of 2014. By the said amendment the applicants intend to substitute the following expression in the relief clause:

“Therefore, the applicants pray that the Hon’ble Tribunal may be pleased to restrain respondents 6 to 9 from further proceeding with the construction of resorts in Bababudangiri and Mullayangiri hill ranges adjacent to Bhadra Tiger Reserve in Chickmagalur District, State of Karnataka and thus render justice”.

in place of:

“Therefore, the applicants pray that this Hon’ble Tribunal may be pleased to direct the respondents to take appropriate action on the representation made by the applicants dated

16.02.2012 with regard to the encroachment and illegal constructions being made in Bababudangiri and Mullayangiri, the hill areas in the State of Karnataka within the time frame that may be fixed by this Hon'ble Tribunal and thus render justice”.

31. It was submitted by the learned counsel for the applicant that originally the applicants sought for a direction to the respondents to take appropriate action on the representation made by the applicants on 16.02.2012 with regard to the encroachment and illegal construction being made in Bababudangiri and Mullayangiri hill areas within a time frame. The representation was to the immediate and effective action that was needed to protect the Western Ghat ecosystem from the eco-tourism by halting the construction of resorts in the hill ranges. Since the 1st to 5th respondents have taken the stand that they have already taken steps to verify the allegations contained in the said representation dated 16.02.2012 and found them incorrect it became necessary for the applicants to seek an amendment to the prayer clause in the main application to restrain the 6th to 9th respondents from proceeding further with the construction of resorts. The counsel for the respondents vehemently opposed the application. After hearing both sides, the Tribunal is of the considered opinion that this application is got to be dismissed for many reasons. In the original application no specific allegation was made against the 6th to 9th respondents. But, it was

generic in nature stating that there were encroachment and illegal constructions are made in Bababudangiri and Mullayangiri hill areas. It was also not pleaded with any specific violation of law. It was only on the specific cause of action that a representation was made on 16.02.2012 and in view of the inaction on the part of the 1st to 5th respondents, directions were sought to be issued. The amendment which is for a substitution of relief clause in entirety, if allowed it would be without any corresponding pleading or evidence and apart from that on altogether a different cause of action. In the instant case, both the parties were given opportunity to put forth their pleadings. The amendment sought for to substitute the relief clause if permitted would alter the very original and fundamental character of the original application. It is a settled law that the amendment shall not be allowed if the amendment would change the character of the application and that too by a different cause of action.

32. It is true that an amendment under rule 16 (7) of the NGT (Practices and Procedure) Rule, 2011 can be ordered. But, an application or appeal can be maintained on only one cause of action.

Rule 14 of the *ibid* Rule, 2011 reads as follows:

“14. Plural remedies. - An application or appeal, as the case may be, shall be based upon single cause of action and may seek one or more reliefs provided that they are consequential to one another”.

33. The Hon'ble Western Zone Bench of the NGT at Pune had an occasion to consider the question of maintainability of an application in a composite form of application-cum-appeal filed in view of the availability of the plural remedies in accordance with rule 14 of NGT Rules, 2011 in *Vikas K. Tripathi Mumbai Vs. The Secretary, MoEF reported in 2014 ALL (I) NGT Reporter (3) (Pune) 95* and has held as follows:

“ 21..... We shall deal with his contention in order to set right issue once for all, in as much as it is likely to be raised in many such cases on similar ground. Rule 14 of the NGT (Practices and Procedure) Rules, 2011 reads as follows:

“Rule14. Plural remedies. - An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another”.

22. Perusal of Rule 14, without any prejudicial notions in the mind, will make it amply clear that any Application or Appeal, as the opening words imply are distinct remedies under which the particular relief may be sought on single cause of action. Thus, if properly read the rule provide as follows:

i) There may be either single Application or Appeal. In other words, it cannot be a comprehensive or hybrid type of pleadings like Appeal-cum-

Application, as captioned by the Appellant-cum-Applicant (Vikas Tripathy) as in the present Application/Appeals.

ii) The Appeal or Application, whatsoever it may be must be filed on single cause of action. Thus, it cannot be filed on several causes of action. In other words, an Appeal cannot be filed with combined causes challenging different ECs or orders, nor an Application can be filed challenging different orders or different violations under the different laws.

iii) Still, however, choice given to the Appellant/Applicant is to ask for grant of more than one relief in case such reliefs are of consequential character. In other words, if a relief depends upon grant of another relief, then grant of more than one relief is permissible.

22. ***

23. We cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two Appeals, one against the time barred EC, coupled with another EC for revised construction plan along with an Application under Sections 14,15 and 18 of the NGT Act, 2010. In case, Vikas Tripathi is genuinely interested in the cause of environment and feels that the project in question has caused violations of EC conditions/

deterioration of the environment, then he is at liberty to file a separate Application under Section 14 (1) (2) read with Sections 15 and 18 of the NGT Act, 2010 if so advised and if it is permissible under law. He cannot, however, club all such Appeals and Applications together and explore to examine whether one cap fits on another”.

34. In view of the same, the request of the applicants seeking amendment to the prayer clause in the Application No. 154 of 2014 (SZ) has got to be negated. Hence, the M.A. No. 284 of 2014 (SZ) is dismissed.

35. In the result, the Application No. 154 of 2014 (SZ) and the M.A. No.284 of 2014(SZ) are dismissed.

36. APPEAL No. 5 of 2015 (SZ)

The appellant herein originally made an application and at the time of admission a direction was issued to the Registry of the Tribunal to convert the application into an appeal. The respondents have filed R.A. No. 1 of 2015 questioning the maintainability of the appeal on different grounds *inter alia* on limitation and jurisdiction.

37. The Tribunal heard the learned counsel for the appellant and also for the respondents and paid its anxious consideration on the submissions made.

37. This appeal is brought forth seeking to set aside an order dated 07.06.2013 made by the Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur shown as 6th respondent and also for a direction to the 4th and 5th respondents to decide the representation dated 27.02.2013 on merits and in accordance with the law.

38. The order under challenge was made on 07.06.2013 by the 6th respondent Conservator of Forest and Director, Bhadra Wild CAT C, Chickmagalur. Admittedly, it was in response to a communication dated 21.02.2103 made by the appellant appealing to cancel the permit given for construction of the resort by the 6th respondent. The entire complaint was that the permission was granted for construction activities for the resort by the 6th respondent. Speaking on the appellate jurisdiction, section 16 of the NGT Act, 2010 makes it clear that any person aggrieved by any order or decision made on or after the commencement of the NGT Act, 2010 can challenge the same provided if the impugned order or decision falls with those order/decision enumerated therein within the stipulated period. But the said order challenged is not from an order or decision enumerated under section 16 of the NGT Act, 2010. On the applicability of the section 16 of the NGT Act, 2010, the Hon'ble Principal Bench of NGT in M.A. No. 894 of 2014 in O.A. No. 26 of 2012 dated 24.12.2014 has held that section 16 provides for appeals to the

Tribunal from clauses (a) to (j) and prescribes the order against which appeal would lie before the Tribunal. The intent of the Legislature in excluding other orders being appealed before the Tribunal is implicit in section 16 of the NGT Act, 2010. Thus, it is quite evident that the appeal is beyond scope, powers and jurisdiction of the Tribunal and hence the appellant cannot maintain the appeal. Therefore, the appeal has to be dismissed as not maintainable.

39. One more contention raised by the learned counsel for the appellant is that the representation by way of an appeal made by the appellant was decided by the authority who was not competent to decide the same and hence on that ground the impugned order has to be set aside. This contention does not merit consideration in view of the aforesaid finding that the appeal itself lies outside the jurisdiction and power of the Tribunal. However, in view of the facts and circumstances of the case, the Tribunal feels it fit that liberty has to be given to the appellant to approach the appropriate authorities for necessary reliefs, if so advised.

40. Once an appeal does not lie before the Tribunal against a given order, it will not be appropriate for the Tribunal to exercise judicial jurisdiction under section 14 or any other provisions of the NGT Act, 2010.

41. In view of the dismissal of the appeal, the Review Application is disposed of accordingly.

42. In the result, the Application No. 154 of 2014 (SZ) and M.A. No.284 of 2014 (SZ) are dismissed.

No cost.

43. The Appeal No. 5 of 2015 (SZ) is dismissed with liberty to the appellant to approach the appropriate authorities for necessary relief, if so advised.

No cost

44. The R.A. No. 1 of 2015 (SZ) in Appeal No. 5 of 2015 (SZ) is disposed of.

No cost.

45. All other connected Miscellaneous Applications pending, if any, are closed.

No cost.

(Justice M. Chockalingam)
Judicial Member

(Prof. Dr. R. Nagendran)
Expert Member

Chennai
Dated, 09th April, 2015