BEFORE THE NATIONAL GREEN TRIBUNAL

(WESTERN ZONE) BENCH, PUNE

MISC APPLICATION NO.118/2014

In

APPLICATION NO.63 OF 2014

CORAM :

HON'BLE SHRI JUSTICE V.R. KINGAONKAR (JUDICIAL MEMBER)

HON'BLE DR. AJAY A. DESHPANDE (EXPERT MEMBER)

B E T W E E N:

Ms. GEETA BHADRASEN VADHAI,
Age 42 years, Occupation- Farmer and Potter,
Adult, Indian inhabitant,
Residing at Post: Dighi, Village,Nandwali,
Taluka Shriwardhan,
District: Raigad, Maharashtra. ....**APPLICANT**

A N D

1. MINISTRY OF ENVIRONMENT AND FOREST,
Paryavaran Bhavan,
CGO Complex, Lodhi road,
New Delhi-110 003.

2. MAHARASHTRA MARITIME BOARD,
Having its office at Indian Mercantile Chambers
3rd Floor, Ramjibhai Kamani Marg,

Ballard Pier, Mumbai.

3. THE COLLECTOR OF RAIGAD,
At Alibag,
District : Raigad, Maharashtra.

4. MAHARASHTRA POLLUTION CONTROL BOARD
Through its Chairman,
Kalpataru Point, 3 and 4th Floor,
Sion Matunga Scheme Road No.8,
Opp. Cine Planet Cinema,
Near Sion Circle, Sion (East),
Mumbai-400 22.

5. THE MAHARASHTRA COASTAL ZONE MANAGEMENT AUTHORITY,
Environment Department,
Room No.217, (Annex),
Mantralaya, Mumbai 400 032.

6. ARCHEOLOGICAL SURVEY OF INDIA
Mumbai Circle,
Sion Fort, Sion.
Mumbai-400 022.

7. DIGHI FORT LIMITED,
Through its Chairman,
having its office at New
Excelsior Building, 6th Floor,
A.K.Nayak, Marg, Fort,
Mumbai 400 001. .....**RESPONDENTS**

Counsel for Applicant(s):

Mr.Ahmad Abdi Advocate a/w Sangramsingh R. Bhonsle Adv

Counsel for Respondent(s):

Mr. Yogesh Hatagade Advocate, Legasis Partners for Respondent No.2.

Mr. Saurabh Kulkarni Advocate a/w Supriya Dangare Advocate for Respondent No.4.

Mr.Saket Mone Advocate i/b Vidhi Partners, Mr. D.D.Pawar i/by Little & Co., for Respondent No.7.

Date: November 13th, 2014

J U D G M E N T

1. By filing this Miscellaneous Application, Original Respondent No.7, raised objection to maintainability of Main Application No.63 of 2014, on the ground that it is barred by the principle of '*Res-judicata*' as well as on account of bar of limitation. Thus, two objections raised by the Original Respondent No.7, are as follows:

i) the Main Application is barred by principle of constructive *Res-judicata* in view of two Judgments rendered by Hon'ble High Court of Bombay in the earlier Public Interest Litigation (PIL), and the Writ Petitions, in which similar issues are decided,

ii) Challenge to Environmental Clearances (EC) dated 30th September, 2005, as well as subsequent communications as prayed in the Original

Application, cannot be challenged being barred by limitation prescribed under the Law.

2. For sake of convenience, Original Respondent No.7 – (Project Proponent), may be referred to hereinafter, as "P.P." and Original Application, namely, M/s Geeta Vadhai, as "the Applicant". The Respondent No.1, is Ministry of Environment and Forests (MoEF), the Respondent No.2, is the Maharashtra Maritime Board (MMB), the Respondent No.3, is Collector of Raigad, the Respondent No.4, is Maharashtra Coastal Zone Management Authority (MCZMA) and the Respondent No.6 is Archeological Survey of India (ASI), as arrayed in the Original Application.

3. The prayers in the Original Application, may be reproduced in order to understand the nature of objections raised in the Misc Application. They are as follows:

(a) That this Hon'ble Tribunal may be pleased to pass an order Cumulative Impact Assessment Study' of the project of Respondent No.? to be conducted by an independent agency and after examining the illegality, be pleased to set aside the Environmental Clearance granted by Respondent No.1 vide Letter dated so" September 2005, Corrigendum dated 30th December 2005 being Exhibit "8" and "C" hereto, SCZ Approval dated 23rd October 2006 Exhibit "E-1" hereto and Letter dated 25th October 200? at Exhibit "E-2" hereto and Letter dated 9th June, 2008 at Exhibit 'E-3' hereto;

(b) That this Hon'ble Tribunal may be pleased to declare that: (i) the quarrying and excavation work undertaken by Respondent No.7,

their servants, agents, employees, officers, contractors or any person or persons claiming through or under it, is unauthorized and illegal;

(ii) the Reclamation undertaken by Respondent No.7, their servants, agents, employees, officers, contractors or any person or persons claiming through or under it, is unauthorized and illegal;

(iii) the blasting and construction work undertaken by Respondent No.7, their servants, agents, employees, officers, contractors or any person or persons claiming through or under it, is unauthorized and illegal;

(c) That this Hon'ble Tribunal may be pleased to create 'Environmental Restoration Fund' to the tune of Rs 4OO Crores to be funded by Respondent No.7 for undertaking work of restoration of the environment in the project area;

(d) That this Hon'ble Tribunal may be pleased to direct Authorities to take appropriate legal action against Respondent No.7 for violation of various provisions of Wetlands (Conversation & Management) Rules 2010, Forest Conversation Act, Environment (Protection) Act,1986, Air (Prevention and Control of Pollution) Act,1981, The Water (Prevention and Control of Pollution) Act, 1974, Coastal Zone Regulation Act;

(e) That pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to :- (i) stay the effect, implementation, execution and operation of the Environmental Clearance granted by Respondent No.1 vide Letter dated 30th September 2005, Corrigendum dated 26th December 2005 being Exhibits "B" and "C" hereto, SCZ Approval dated 23rd October 2006 Exhibit "E- 1" hereto and Letter dated 25th October 2007 at Exhibit "E-2" hereto and Letter dated 9th June 2008 at Exhibit "E-3" hereto;

(ii) In the alternative to prayer clause (e)(i) above, this Hon'ble Tribunal be pleased to restrain the Respondent No.7, its servants, agents, contractors, officers, employees or any person or persons claiming through or under it from in any manner carrying out

the work of construction, quarrying, blasting and reclamation pursuant to the Environmental Clearance granted by Respondent No.1 vide Letter dated so" September 2005, Corrigendum dated 26th December 2005 being Exhibits "B" and "C" hereto, SCZ Approval dated 23rd October 2007 at Exhibit "E-2" hereto and Letter dated 9th June 2008 at Exhibit "E-3" hereto, in any manner whatsoever;

(iii) To appoint a fit and proper person as an Commissioner / Officer of this Hon'ble Tribunal to visit the site / project commenced by Respondent No.7 and submits his report about the actual and factual position on the project site;

4. The P.P. has come out with a case that the Main Application is filed almost after nine (9) years from the date of Environmental Clearance (EC) and therefore, it is barred by limitation. The EC cannot be challenged either under Section 14 or Section 15 of the NGT Act, 2010. The EC was granted on 30th September, 2005, by the MoEF, in favour of the P.P. and thereafter, it was examined by the Hon'ble High Court in Public Interest Litigation (PIL) No.42 of 2009, ('Dighi Koli Samaj Mumbai Rahivasi Sangh (Regd) through its Secretary Vs. Union of India'). The PIL was disposed of by Hon'ble High Court of Bombay with certain directions. The limitation period cannot be extended under the special enactment, i.e. the National Green Tribunal Act, 2010, in absence of any discretionary powers to grant extension of limitation. The concept of 'continuous cause of action' is ill-founded and wrongly interpreted by the Applicant. The interpretation put forth by the Applicant, will make the words – 'first cause of

action' meaningless and otiose and therefore should not be accepted. The Hon'ble Principal Bench of NGT in '***Aradhana Bhargva & anr vs MoAEF & Ors***' (Application No.11 of 2013), held that "*if such Application is not filed within prescribed period of limitation, after following of 'first cause of action' then it will have to be dismissed*".

5. According to P.P. the Judgment in PIL NO.42 of 2009, is the '*judgment in rem*' and as such, it operates as *'Res-judicata'*. It is contended that judicial decision of the Hon'ble High Court declares, determines and deal with all the relevant issues, which are brought up through the present Application by Geeta Vadhai. The principles of constructive Res-judicata are, therefore, applicable to the present proceedings and hence, the Main Application is barred in view of applicability of principle of 'constructive Res-judicata'. It is for such reason that the P.P. (Respondent No.7), sought dismissal of the Main Application.

6. By filing reply to the Misc. Application of P.P. it is averred by the Applicant that EC conditions are still being violated by the P.P. though Dighi Port undertook to provide drinking water to the villagers yet nothing was done in this behalf. It is further contended that Dighi Port is still going ahead with the project in violation of various Environmental norms, like destruction of mangroves, cutting of hill, removal of earth, and various other such

defaults. The complaints made about them, are not being addressed by the Authorities, under the influence of P.P. It is contended that mining activities are being carried out by the P.P. without NOC from the concerned Authorities. It is also contended that the P.P. is carrying out reclamation and blasting activities with a view to demolish hilly areas in Agardanda and Dighi Port. It is contended that all such activities are likely to cause serious damage to Sindhudurg Fort, which is of immense archeological importance. It is, therefore, contended that the Application may be considered in view of the present information collected by the Applicant in reply to the R.T.I. Applications. It is further contended that wrong committed by the P.P. is being continuously done, day in and day out and as such, the Application cannot be said to be barred by limitation. It is further contended that 'cause of action' arose on March 1st, 2014, and therefore, the Application is within limitation. It is denied that the Application is barred by the principle of '*Res-judicata*'. According to the Applicant, NGT, is not required to follow the Civil Procedure Code and therefore, the principle of '*Res-judicata*' need not be followed.

7. We have heard learned Advocates for the parties. We have gone through the relevant documents on record. According to the Applicant, the port activities have been undertaken without permission of CRZ. The Applicant has

filed certain photographs, in order to show that reclamation is being undertaken at Agardanda. It is contended that these are new developments, which give 'cause of action' for the purpose of present Application. Before we proceed further to discuss merits of the matter, it is important to note that in the Main Application, Limitation Clause, did not show any reason as to why the date of 'cause of action' is indicated as 1st March, 2014. Paragraph 34 of the Application, in fact, shows that there is vague statement in the Application, that there is no delay in filing of the present Application. It appears that sentence 'cause of action arose on 1st March,2014' is handwritten subsequently because, learned Counsel for the P.P., MPCB and others showed their copies of the Application and pointed out that their copies do not show such handwritten part in paragraph 34. We only say that this is not fair and proper. Even otherwise, such a vague statement does not make any head or tail in the context of the issue.

8. So far as challenge to the EC is concerned, in our opinion, it is bygone issue, inasmuch as EC was issued on 30th September, 2005, whereas the Application is filed on 27th May, 2014. At any rate, whether it is treated as an Appeal or Application under Section 14, read with Section 18 of the NGT Act, the Application is hopelessly barred by limitation. In case of '***Aradhana Bhargva & Anr Vs MoEF***'

(Application No.11 of 2013), Bhopal Bench of NGT, observed that :

"**23**. *From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule-I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.*

24. *Under Section 15 of the Act, an application for relief and compensation to the victims of pollution and other environmental damage under the enactments specified in Schedule-I, or for restitution of the property damage or for restitution of environment for such area or areas, the application could be filed within a period of five years from the date of which the cause of action*

for such compensation or reliefs first arose. Also, if sufficient cause was shown, the Tribunal is empowered to condone the delay for a period not exceeding 60 days. Significant it is to note that the expression "cause of action for such dispute first arose" is employed. By employing the above expression, the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the dispute arose, is explicit. This is not only an indication but also the caution that the later dates on which subsequent events arose should not be taken into account for computing the period of limitation.

28. *Trait law it is that the special law of limitation, in any given enactment, will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides period of limitation under Section 14(2) and 15(3), as stated supra. The Principal Bench, NGT has already held in Jesurethinam & Ors Vs. Ministry of Environment, Union of India & Ors, reported in 2012 (2) FLT 811 NGT that, when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the*

Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for which the specific period of limitation is available under the NGT Act, 2010.

30. *A person who wishes to invoke the jurisdiction of the Tribunal or Court has to be vigilant and conscious of his rights and should not let the time to go by not taking appropriate steps. It is true that the provisions of law of limitation has to be construed liberally but the same cannot be applied to the present facts of the case for the reasons stated above. It is true that the Tribunal must adopt a practical approach which is in consonance with the provisions of the Act providing limitation. In the instant case, the period of limitation has begun to run long back. The period of limitation once commences operating, it does not stop but continues to operate with its rigour. An interpretation accepting the continuing cause of action would frustrate the very object of the Act and the purpose of prescription of limitation. In the instant case, it is contended by the respondent project proponent that nearly 600 crores have been spent and more than 50% of the work is over, hence, the project proponent who obtained*

the environmental clearance in the year 1986 and has completed not less than 50% of the work by spending hundreds crores of rupees would be thrown to jeopardising his project at the long lapse of years. Needless to say, if it is allowed, it would be against the very intent of the law. Even it may be true that the applicants are aggrieved persons and it may even be true that there was violations of provisions of law but action should have been initiated within the prescribed period of limitation. In view of all the above, it can be well stated that the contentions put forth by the Learned Counsel for the applicants that the application was within time have to be rejected."

(Emphasis supplied)

9. We have gone through the Judgment of PIL No.42 of 2009, delivered by the Hon'ble High Court of Judicature at Bombay. The main challenge in the said PIL was to the EC Notification dated 30th September, 2005, along with other issues raised. We may reproduce the grounds which were put forth by the petitioner in that case are as follows;

(a) Clearance for development has been granted contrary to law. The affected villagers/persons were not granted public hearing as required under the law. Non-compliance to this statutory

aspect would violate the Notification dated 30th September, 2005;

(b) Various conditions for granting of sanction accorded are otherwise not in public interest and have been permitted in favour of Respondent No.6 at the cost of large number of villagers, who are personally affected;

(c) And in the alternative, even if the permission is held to be valid, still the concerned Respondents have violated the conditions with impunity with particular reference to damaging the sand and reclaiming the land from the sea;

(d) The environment and ecology of the area have been destroyed to the disadvantage of the people of the area at large; and

(e) Lastly, despite there being a specific stipulation in regard to putting in place of proper system of water supply, the Respondents, particularly Respondent No.6, has failed to provide/install proper water supply from time to time in the villages. They have not even made proper arrangement for temporary supply of water. This was an essential condition and in fact the essence for grant of permission, and therefore, the violation thereof would be fatal.

10. Perusal of the Judgment in PIL No.42 of 2009, reveals that the P.P. was allowed to commission the project at Port Dighi by complying certain conditions. It appears that the Authorities, including MPCB, were directed to ensure that the conditions were duly complied with before commissioning of the Port. The order was further modified by subsequent order dated 21st January, 2011, in PIL No.42 of 2009, in Civil Application No.1 of 2011. Thus, Dighi Port was allowed to commence activities by the High Court. The issues raised in the PIL, including validity of the EC, were considered by the Hon'ble High Court of Judicature at Bombay and were decided by its Judgment in the said PIL No.42 of 2009. Therefore, the Judgment is to be considered as '*Judgment in rem*'. Thus, it was not only filed by the persons, who are the parties to the Petition/Application, but all concerned/connected persons concerned with the issues or having rights.

11. In "**State of Karnataka & Anr vs Indian Manufacturers Organization and Ors**." (2006) 4 SCC 683, the Apex Court held that "*such a Judgment in rem, amounts to constructive res-judicata under Section 11, Explanation III, IV of the C.P.Code.* " It is observed that:

> *"The principle and philosophy behind Explanation IV, namely, to prevent the "the abuse of the process of the court" (as stated in Greenhalgh) through re-agitation of settled issues, provides yet*

another ground to reject the appellants' contentions. In the face of such a finding by the High Court, Explanation IV to Section 11 squarely applies as, admittedly, the litigation in the earlier cases exhausted all possible challenges. Merely because the present petitioners draw semantic distinctions, the issue does not cease to be res-judicata or covered by principles analogous thereto. If the issues that had been raised/ought to have been raised in the previous case were to be re-examined by the Supreme Court, it would simply be an abuse of the process of the court, which cannot be allowed. Therefore, the previous writ petition operated as res judicata for the questions raised in the present petition."

12. In the matter of ***Karam Chand Vs. Union of India and Ors***, (Appeal No.68 of 2013), the Hon'ble Principle Bench of NGT, also dealt with similar issue. The Hon'ble Principle Bench of NGT, observed that:

"**28**. The *law in regard to res judicata and constructive res judicata has been the subject of judicial scrutiny now for long. With the passage of time, various principles have been enunciated in regard to the application of these doctrines. The Indian Law codifies both these doctrines where they do form part of the procedural law while in*

other countries it is covered even under the common law. To aptly apply the various principles that have emerged with the passage of time, it is necessary for us to recapitulate the stated principles, which are as follows:

(i) *Constructive res judicata is a special, technical and artificial form of res judicata enacted by Section 11.*

(ii) *Explanation IV to Section 11 obliges the plaintiff or the defendant to take all the grounds of attack or defence by putting forward his whole case in the former suit.*

(iii) *No distinction can be made between the claim that was actually made and the claim that might and ought to have been made a ground of attack or defence.*

(iv) *A matter which "might and ought" to have been made a ground of attack or defence shall be deemed to be a matter directly and substantially in issue constructively.*

(v) *The words "directly and substantially in issue" apply to both the" suit" as well as the "issue".*

(vi) *The terms "might" and "ought" are of wide amplitude and hence all the grounds of attack or defence even if they could be taken in alternative, should be taken in the former suit.*

(vii) *A plea which was not in existence, or was not within the knowledge of the party or could not be raised or was so dissimilar which might lead to confusion, cannot be said to be one which "might and ought" to have been raised.*

(viii) *The word "and" between the words "might" and "ought" must be read as conjunctive and not disjunctive.*

(ix) *The word "might" conveys knowledge on the part of the party affected about the existence of ground of attack or defence. Whether or not the party has such knowledge is a question of fact.*

(x) *Whether a particular might "ought" to have been made a ground of attack or defence depends upon the facts and circumstances of each case.*

(xi) *The doctrine of constructive res judicata applies to writ petitions filed under Article 32 or Article 226 of the Constitution. It, however, does not apply to a writ of habeas corpus.*

(Ref: Thakker C.K.,Code of Civil Procedure, Vol.I, Pg 168)

29. *From the analysis of the above principles, it is clear that the rule of res judicata is mandatory in its application and should be invoked in the interest of public policy and finality. The matter which have actually been decided would also*

apply to the matters which have been impliedly and constructively decided by the Court. These principles are to be applied to preserve the doctrine of finality rather than frustrate the same. The doctrine of res judicata is the combined result of public policy so as to prevent repeated taxing of a person to litigation. It is primarily founded on the following three maxims:

(1) Nemo debet bis vexari pro una et eadem causa : *no man should be vexed twice for the same cause.*

(2) Interest republicae ut sit finis litium : *it is in the interest of the State that there should be an end to a litigation; and*

(3) Res judicata pro veritate occipitur: *a judicial decision must be accepted as correct.*

30. *As discussed, the principle of res judicata or constructive res judicata found in Section 11 and Explanation IV to Section 11 of the Code of Civil Procedure is applicable to judgment in rem. The principle of res judicata applies even to public interest litigation initiated under Article 226 of the Constitution of India even though such proceedings are not governed by the Code of Civil Procedure. If a specific question was not raised and ought not to have been decided in an earlier*

proceedings by the Court in given circumstances, it may not debar a party to agitate the same at an appropriate stage but certainly subject to the applicability of the principles of res judicata or constructive res judicata (Refer: State of Haryana and Ors, v. M.P. Mohla, (2007) 1 SCC 457). The doctrine of res judicata is conceived not only in the larger public interest which requires that all litigation must sooner than later come to an end but is also founded on equity, justice and good conscience. The rule of conclusiveness of judgments equally supports application of the principle of res judicata. Once its ingredients are satisfied, then it must apply with its rigour, object being that a litigation must come to an end (Refer: Swami Atmandanda v. Sri Ramakrishna Tapovanam (2005) 10 SCC 51). In Daryao v. State of Uttar Pradesh AIR 1961 SC 1457, the Supreme Court while placing the doctrine of res judicata on a high pedestal, treating it as a part of the rule of law, held:

"*The binding character of judgments pronounced by counts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis.***"**

31. *In terms of the provisions of Section 19 of the NGT, Act, the Tribunal is not bound by the procedure of Civil Procedure Code but shall be guided by the principles of natural justice. The restriction further contemplated under Section 19(2) is that subject to the provisions of the Act, the Tribunal shall have power to regulate its own procedure. The application of the Civil Procedure Code in its definite terms is controlled by Section 19(4). The Tribunal, thus, has to regulate its own procedure and the same has to be in consonance with the principles of natural justice. Another obvious precept to regulation of procedure by the Tribunal is that it should not be opposed to the basic rule of law and public policy, res judicata or constructive res judicata.*

32. *In light of the above principles and the afore-stated maxims, we shall now revert to the facts of the present case. As already noticed, the petitioners before the High Court had challenged all aspects including the environmental clearance and the recommendations in relation to the establishment and operationalization of the Bajoli Hali Hydro Project at River Ravi in district Chamba. They had taken up various grounds*

including location of the project and its change from right bank to left bank of River Ravi.

33. *The High Court had dealt with all the issues and found that such change was appropriate and did not call for any interference. The questions in relation to the public hearing, ecological impacts, the NOCs issued by the Gram Panchayat, rights of the local people and rehabilitation and resettlement scheme were discussed in great elaboration by the High Court. Despite such detailed discussions, the appellants have filed the present appeal on the ground that there are certain factual errors in the judgment of the High Court, complete documents had not been placed before the Court and there was suppression of relevant material by the project proponent. We have already referred to the relevant portion of the order dated 13th November, 2013 vide which the application for review was dismissed as untenable, flimsy and without any substance. These judgments, as already held by us above, are the judgments in rem and would apply to the public at large and would not be restricted to the specific petitioners named in the Writ Petitions. On that analogy, the appellants in the present appeal would also be covered; would be debarred from*

re-agitating the issue directly and substantially raised before the High Court or even which ought to have been raised and deemed to be impliedly and constructively decided by the High Court. So, the appeal would be hardly lie before the Tribunal. Therefore, the contention that they were not party to the Writ Petition before the High Court and that the letter dated 28th January, 2013 gives the appellants an entirely fresh cause of action ***de hors*** *the issue raised in the Writ Petition, does not appeal to the Tribunal and is liable to be rejected".*

13. We gave liberty to the Applicant/Appellant to file an additional affidavit. We have perused additional affidavit of the Applicant. It appears that she herself had not filed any complaint as such to the Authorities. However, she claims that her friend by name Mr. Nevrum Modi, on behalf of Bombay Environment Action Group, had filed communication dated 23rd March, 2011. She alleges that she made a complaint to MCZMA on 13th March, 2014 about the same issue. The question is whether the EC dated 30th September, 2005, was impugned by the Appellant, in any manner. A copy of complaint filed by Applicant – Geeta, is annexed to the additional affidavit and appears to be addressed to the Chairperson of the MCZMA. The date of said complaint appears to be typed as August 14th, 2011. But the date of receipt in the office of

MCZMA, appears to be 7-10-2001 and the last page of that complaint shows that it is dated 12.3.2001 or 2011. There appears something amiss about date of complaint. In any case, the complaints were not made within six (6) months period before commencement of 'cause of action'. These complaints may be investigated by the Authorities for examining violations of the terms of EC/CRZ orders, or cancellation of EC/CRZ or taking suitable action against the Project Proponent (PP), as may be required under the Law, in view of Section 5 of the Environment (Protection) Act, 1986.

14. Considering legal position discussed above, we are of the opinion that the legal issues raised by the Project Proponent are valid and will have to be accepted. Needless to say, that the Miscellaneous Application must be allowed. It follows, therefore, that the Main Application, will have to be dismissed. For, it is *fate-accompli* of the Misc Application.

15. Though, we have found that the Application is barred by the principles of '*constructive Res-Judicata*' and that the same is barred by limitation, yet, we have noticed that there are various violations, which the Project Proponent, has done so far. They are duly brought to the notice of the Authorities, including CRZ Authority, the Collector and Archeological Department by Geeta Vadhai etc. We are also of the opinion that violations of the EC conditions, if

are found by the Authorities, then strict action is warranted, whosoever the Project Proponent, may be. Consequently, we direct the Authorities to take action in case such violations, if are brought to their notice or observed by them, then they shall issue appropriate order/s under the Environment (Protection) Act, 1986, or under the CRZ Regulations, as the case may be. The Applicant is at liberty to bring such facts to the notice of the concerned Regulatory Authority against such activities, in case of particular violation of the provisions of concerned enactments, apart from seeking directions in respect of discharge of obligations and duties by exercise of powers vested in the authorities under the said enactment. She can also seek enforcement of all rights relating to environment.

16. With these observations, we allow the Miscellaneous Application and dismiss the Main Application. We grant liberty to Original Applicant (Geeta) to approach this Tribunal, if any new cause of action arises within the framework of NGT Act, 2010. Applications are accordingly disposed of.

....., **JM**
(Justice V. R. Kingaonkar)

……, **EM**
(Dr.Ajay A. Deshpande)

Date: November 13th, 2014