

**BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI  
(PRINCIPAL BENCH)**

**REVIEW APPLICATION NO. 5/2013**

**AND**

**REVIEW APPLICATION NO. 6/2013**

**IN**

**APPLICATION NO. 29/2012**

**31<sup>ST</sup> MAY, 2013**

**Coram:**

- 1. Hon'ble Shri Justice V.R. Kingaonkar  
(Judicial Member)**
- 2. Hon'ble Dr. P.C. Mishra  
(Expert Member)**
- 3. Hon'ble Shri P.S. Rao  
(Expert Member)**
- 4. Hon'ble Shri Ranjan Chatterjee  
(Expert Member)**
- 5. Hon'ble Shri Bikram Singh Sajwan  
(Expert Member)**

**B E T W E E N:**

**NISARGA NATURE CLUB,**  
A7 Kurtarkar Classic,  
Near Power House,  
Aquem, Margao, Goa.  
Represented by  
Mr. Sandeep Azrenkar,  
In capacity as President as above.

Original Applicant/  
Review Petitioner

**V/S**

**1. SHRI SATYAWAN B PRABHUDESSAI**

Gaonkarwadem-Usgao,  
Ponda, Goa

.....Review Applicant/  
Respondent No. 1

**2. ASSISTANT DEPUTY CONSERVATOR OF FORESTS**

Forest Department,  
Office of Deputy Conservator of Forests,  
Panaji, Goa

**3. UNION OF INDIA**

Ministry of Environment and Forests  
Paryavaran Bhavan,  
CGO Complex, Lodhi Road,  
New Delhi 110003

**4. HINDUSTAN PETROLEUM CORPORATION LIMITED**

Vasco Retail Region,  
C/o Vasco Terminal,  
F.L. Gomes Road, P.B. No. 48  
Vasco-Da-Gama – 403802 (Goa)

.....Respondents

**(Advocates appeared: Mr. Ritwick Dutta, Advocate with Ms. Srilekha Sridhar, Advocate for (Review Applicant in R.A. No. 6/2013 and Respondent No. 1 in R.A. No. 5/2013), Mr. Yashraj Singh Deora and Mr. Prashant Narang, Advocates for (Review Applicant in R.A. No. 5/2013 and Respondent No. 1 R.A. No. 6/2013) and Mr. V. Madhukar, Advocate with Mr. Paritosh Anil, Advocate for Respondent No. 2, Ms. Neelam Rathore, Advocate for Respondent No. 3 and Mr. Anuj Puri, Advocate for Respondent No. 4).**

## **COMMON ORDER**

By filing Review Application No. 5/2013, Shri Satyawan B. Prabhudessai, who was the Respondent No. 1 in the Original Application No. 29/2012, seeks review of judgment dated 21.02.2013 to the extent of the findings recorded in paragraphs no. 26 and 27 and direction in paragraph no. 28 of the judgment.

2. By filing Review Application No. 6/2013, original Applicant, namely, Nisarga Nature Club seeks review of the judgment passed in the Application No. 29/2012 and to recall the final order passed therein, whereby that application was dismissed.

3. We have heard Learned Counsel for the parties. We have carefully perused the relevant record.

4. At the outset, let it be noted that the scope of review application is rather limited. The review application cannot be treated as an Appeal. It can be entertained only when there appears some significant “mistake or error apparent” on face of the record. The review application can also be entertained when some material fact is brought to the notice of the Court / Tribunal, which could not be so done at the time of hearing of the matter earlier, and when such mistake is a bonafide one.

5. The legal position is set at rest by the Hon’ble Supreme Court in the case of “**State of West Bengal & Ors. Vs. Kamal**

**Sen Gupta & Anr.”** reported in **(2008) SCC**. In the said case, it has been observed as follows:

*“The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of record for the purpose of Order 47 Rule 1 CPC or Section 22(3) (f) of the Act. To put it differently, an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. While exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”*

**(emphasis supplied)**

6. Perusal of the relevant record and particularly the original file of the proceedings before the Additional Collector-II, South Goa Distt., Margao, Goa reveals that the Application filed by Shri Satyawan B. Prabhudessai was for conversion of 2500 sq. mtrs. area out of land Survey No. 25/2 in order to install a petrol filling station. We have also noticed that although the Sanad was granted, initially, for conversion of the land to residential use, yet the conversion fees was charged for conversion of the land from agricultural use to commercial use. It is obvious that there is patent error committed by the

Counsel and/or the Applicant , Shri Satyawan B. Prabhudessai in their failure to place on record the amended Sanad (Permission) which purportedly allowed conversion of land, S. No. 25/2, to the extent of 2500 sq. mtr. from agricultural use to commercial use. It appears that the Additional Collector rectified the mistake by issuing corrigendum on 08.04.2008.

7. From the record it is manifestly clear that within a few days of issuance of the Sanad the error was corrected by the Additional Collector-II, South Goa Distt., Margao. The only error on face of the record is that Shri Satyawan B. Prabhudessai and his Counsel did not take care to place on record the corrigendum dated 08.04.2008 whereby the words “residential use only” were directed to be read as “commercial use only”. We have also noticed from the office file of the Additional Collector-II, South Goa Distt., Margao that the conversion fees for conversion of agricultural land of the relevant category measuring 2500 sq. mtrs. to commercial use was @ Rs. 40/- per sq. mtr. and as such conversion fees of Rs. 1,00,000/- (Rs. one lakh only) had been recovered from Shri Satyawan B. Prabhudessai. The error is apparent on the face of record and as such it will have to be said that the Sanad was issued for conversion of agricultural land Survey No. 25/2 to commercial use and not for residential use. Obviously, the observation of this Tribunal that the conversion of land was not specifically permitted for any commercial purpose will have to be deleted from the paragraph 26 of the judgment under review. However, the observation of this Tribunal that the area of

18000 sq. mtrs. was bulldozed instead of converting the area of 2500 sq. mtrs. for commercial use, out of land Survey No. 25/2, is based upon factual finding and need not be corrected. In other words, we do not find it necessary to allow the review in the context of final order indicated in paragraph 28 of the judgment under review to the extent it relates to clearance of excessive area beyond terms of the Sanad.

8. So far as Review Application No. 6/2013 is concerned, Learned Counsel Mr. Ritwick Dutta argued that the land survey no. 25/2 is surrounded by the notified forest and therefore, the part thereof could also be treated as a private forest in view of the contiguous nature thereof. He argued that the observations of the Hon'ble Apex Court in "T.N. Godavarman Thirumulpad Vs. Union of India & Ors." have not been properly appreciated by this Tribunal. He further argued that when Respondent No. 1 - Shri Satyawan B. Prabhudessai had bulldozed area in excess of 2500 sq. mtrs. from the agricultural land, the report of the third expert committee should have been accepted in order to reach the conclusion that the part carved out of survey no. 25/2 for so called conversion was a private forest. He argued that the observation of Karapurkar Committee could not be taken as basis for exclusion of land survey no. 25/2 from the category of private forest.

9. Having duly considered the submissions of Mr. Ritwick Dutta and the grounds stated in the review application, we are of the opinion that this review application seeks to invoke

appellate jurisdiction. We do not find any error apparent on face of record in the context of the findings recorded against the Applicant. We also do not find any factual mistake in this context. This Tribunal cannot sit in appeal against its own judgment.

10. It is well settled that a review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. The word “sufficient reason” is wide enough to include a misconception of fact or law by a Court or even by an advocate. An application for review may be necessitated by way of invoking the doctrine of “*Actus Curiae Neminem Gravabit*” which otherwise means that an Act of the Court shall prejudice no one. Mistake in the nature of wrong quoting of provisions/contentions may also call for a review of the order. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake there is nothing to prevent the Court from rectifying the said error.

11. Considering the forgoing reasons, we partly allow Review Application No. 5/2013 and direct that finding of this Tribunal as shown in paragraphs no. 26 and 27 of the judgment under review, to the effect that “the part of the land survey no. 25/2 to the extent of 2500 sq. mtr. was converted from agricultural use to residential use” shall be deleted.

12. It follows that Shri Satyawan B. Prabhudessai is not required to take permission afresh from the Collector. However, having regard to the fact that he cleared excessive area of 15500 sq. mtr., we direct that the petrol filling station shall not be allowed to operate till Shri Satyawan B. Prabhudessai deposits an amount of Rs. 7,25,000/- (Rupees seven lac twenty five thousand only) as penal cost for plantation, with the State Government, Goa. The paragraph no. 28 shown in the order under review is, therefore, deleted and substituted as follows:-

*“For the reasons aforesaid, we dismiss the application with no order as to costs. We direct the Respondent No. 1 (Shri Satyawan B. Prabhudessai) to maintain status quo and not to operate the petrol filling station till he deposits an amount of Rs. 7,25,000/- (Rupees Seven lac twenty five thousand only) as penal cost for plantation of 15500 sq. mtr. area which has been excessively cleared out of survey no. 25/2. This is not to be treated as precedent in future. The plantation shall be undertaken under the supervision of Forest Department and the amount be credited to the account of Forest Department, State of Goa as per the Rules. The concerned Collector shall initiate due proceedings for breach of the condition of Sanad dated 02.04.2008 and the corrigendum dated 08.04.2008, particularly, the condition no. 1, keeping in view the penalty clause at serial no. 6 of the Sanad, including revocation of the Sanad if the cost of plantation is not deposited and the penalty, if any imposed by the Collector, is not deposited.*



*The concerned Collector of South Goa District, Margao (Goa) is directed to initiate appropriate proceedings in this context, within a period of one (1) month. The result of said proceedings shall be informed to the Registrar of this Tribunal within a period of two (2) months.”*

13. The Review Application No. 5/2013 is accordingly partly allowed and partly dismissed. The Review Application No. 6/2013 **stands dismissed. No Costs.**

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

....., EM  
(Dr. P.C. Mishra)

....., EM  
(P.S. Rao)

....., EM  
(Ranjan Chatterjee)

....., EM  
(Bikram Singh Sajwan)