

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPLICATION No. 45/2013(WZ)**

**CORAM:**

**Hon'ble Mr. Justice V.R. Kingaonkar  
(Judicial Member)  
Hon'ble Dr. Ajay A. Deshpande  
(Expert Member)**

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

**1. Shri Satish Kamalakant Navelkar,**

Age 52 yrs., Occn : Agriculturist,  
R/o. H.No.1132, Poirra Mayem,  
Taluka Bicholim- 403 504 Goa.

**2. Shri Ulhas Rama Salgaonkar,**

Aged 48 yrs., Occn : Driver-  
Cum-Agriculturist, R/o. H.No.1008,  
Bharat Wada, Poirra, Mayem,  
Taluka Bicholim-403 503 Goa.

**3. Shri Pramod Uttam Ghatwal,**

Age major, Occn : Agriculturist,  
At H.No.131, Poirra Mayem,  
Taluka : Bicholim, Goa.

**4. Shri Pundlik Vitthal Navelkar,**

Age major, Occn : Agriculturist,  
R/o. H.No.1394-114, Poirra Mayem,  
Taluka Bicholim-403 503, Goa.

**5. Madhusudan Ramchandra Navelkar,**

Aged 59 yrs., Occn : Driver-  
R/o. H.No.1394/114, Poirā Mayem,  
Taluka Bicholim-403 503, Goa.

**6. Damini w/o. Nanda Navelkar,**

Age 62 yrs., Occn : House wife,  
At H.No.1075, Poirā Mayem,  
Taluka : Bicholim-403 503, Goa.

**7. Shamsundar Anant Ghatwal,**

Age 64 yrs., Occn : Agriculturist,  
R/o. H.No.1176/20, Poirā Mayem,  
Taluka Bicholim, Post : Assonora,  
Goa 403 504.

**8. Shri Rama Kusta Haldankar,**

Aged 71 yrs., Occn : Agriculturist,  
R/o. H.No.1090, Bharat Wada,  
Poirā- Mayem, Taluka Bicholim,  
Post : Assonora, Goa. 403 503

**9. Shri Gajanan Babli Surlikar,**

Age 42 yrs., Occn : Agriculturist,  
At H.No.1103, Poirā Mayem,  
Taluka : Bicholim, Ta. Assonora,  
Goa 403 503.

**10. Shri Subhash Deu Salgaonkar,**

Age 50 yrs., Occn : Agriculturist,  
R/o. H.No.1007, Poirā Mayem,  
Taluka Bicholim, Post : Assonora,  
Goa 403 503.

**11. Rohit Krishna Navelkar,**

Aged 25 yrs., Occn : Agriculturist,  
R/o. H.No.1074, Poirā Mayem,  
Taluka Bicholim-403 503, Goa.

**12. Rama Vishnu Ghatwal,**

Age 80 yrs., Occn : Agriculturist,  
At H.No.1131, Poirā Mayem,  
Taluka : Bicholim-403 503, Goa.

**13. Ramchandra Shamba Karbotkar,**

Age 48 yrs., Occn : Agriculturist,  
R/o. H.No.1099, Poirā Mayem,  
Taluka Bicholim- 403 504 Goa.

**14. Vinayak Raghunath Pole,**

Aged 50 yrs., Occn :Agriculturst,  
R/o. H.No.1020, Poirā Mayem  
Taluka Bicholim, Post – Assonora,  
Goa -403 503

**15. Ashok Arjun Ghatwal,**

Age 56 Yrs., Occn : Agriculturist,  
At H.No.1237, Poirā Mayem,  
Taluka : Bicholim, Post : Assonora,  
Goa. 403 503

**16. Vinayak Gajanan Sakhalkar,**

Age 40 Yrs., Occn : Agriculturist,  
R/o. H.No.1105, Poirā Mayem,  
Taluka Bicholim, Post : Assonora,  
Goa -403 503,

**17. Nirmala Naresh Panjekar,**

Aged 589 yrs., Occn : House wife,  
R/o. H.No.545, Atalwada, Aldona,  
Khorjua, Bardez –Goa -403 503,

**18. Ashwini Ashok Agarwadekar,**

Age 52 yrs., Occn : House wife,  
At H.No.548/2, Atalwada, Aldona,  
Khorjua, Bardez – Goa 403 503,

**19. Shridhar Vaman Pole,**

Age 80 yrs., Occn : Agriculturist,  
R/o. H.No.443, Podwal wada, Aldona,  
Khorjua, Bardez, Goa-403 504

**20. Ravlu Laximan Pole,**

Aged 65 yrs., Occn : Agriculturist,  
R/o. H.No.417, Podwal Wada,  
Aldona, Khorjua, Bardez,  
Goa 403 508

**21. Kishor Pandhari Panjekar,**

Age 45 yrs., Occn : Agriculturist,  
At H.No.245, Podwal wada, Aldona  
Khorjua, Bardez – Goa-403 508

**22. Sarojini Ghatwal @ Sarita Ghatwal,**

w/o. Shankar Ghatwal, Age major.,  
Occn : Agriculturist,  
Poira Mayem, Taluka Bicholim,  
Post : Assonora, Goa 403 503.

**23. Bhanudas Pandurang Haldankar,**

Aged major., Occn : Agriculturist,  
R/o. Poira Mayem, Taluka Bicholim  
Post Assonora, Goa-403 503

....Applicants

**A N D**

**1. State of Goa,**

Through : Its Chief Secretary,  
Office at Secretariat, Porvorim,  
Goa - 403 005.

**2. The Director of Mines,**

Director of Industries & Mines,  
Government of Goa,  
Udyog Bhavan, Panaji,  
Goa 403 005

**3. The Chief Engineer,**

Water Resources Department,  
(formerly known as Irrigation Deptt.)  
Govt. of Goa, Junta House, Panaji  
Goa 403 001.

**4. The Collector of North Goa,**

Government of Goa,  
Collectorate, Panaji,  
Goa 403 001.

**5. Director of Agriculture,**

Government of Goa,  
Tonca, Panaji Goa 403 001,

**6. Goa State Pollution Control Board,**

Government of Goa, Panaji, Goa.

**7. Indian Bureau of Mines,**

Government of India,  
Office at Fatorda, Margao, Goa.

**8. Union of India,**

Through : Its Secretary,  
Ministry of Environment and Forest,  
Government of India, Paryavaran Bhavan,  
Lodhi Road, New Delhi 110 003.

**9. M/s. Chowgule & Co. Pvt. Ltd.,**

A Company incorporated under  
Companies Act 1956,  
Office at : Mormugao Harbour, Mormugao  
Goa 403 802.

**...Respondents**

**Counsel for Appellant :**

Mr. Shashikant Joshi a/w.

Mr. B.P. Natekar, Adv.

**Counsel for Respondent No. 1 to 5:**

Mrs. F.M. Mesquitta w/

Mrs. Supriya Dangare, Adv.

**Counsel for Respondent No.7 :**

Mr. Mahesh Amonkar, Adv.

**Counsel for Respondent No. 8:**

Mr. S.V. Abhang, Adv.

**Counsel for Respondent No. 9:**

Mr. A.P. Akud, Adv.

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**DATE : April 8<sup>th</sup>, 2015**

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**J U D G M E N T**

1. The Applicants claim to be the farmers and agricultural tenants of the properties surveyed under S.No.51 (with all its sub-divisions) of the village Poiramayem, Taluka Bicholim, Goa, which properties are hereinafter referred as “the disputed property”. The Applicants have filed this Application under Section 18(1) read with Sections 14, 15, 16 and 17 of the National Green Tribunal Act, 2010 mainly alleging that the Respondent No.9-mining industry has caused damage to the agricultural land and the surrounding environment due to dumping of mining rejection and discharge of untreated water generated in the mining operations. The Applicants submit that their paddy fields on the disputed land are self irrigated with the water from adjoining pond and somewhere in 1998-99 and the mining activities caused

damage to the water resources and also to the agricultural property. The Applicants claim to have approached various Government authorities and only on 4<sup>th</sup> March 2008, the Mamlatdar Bicholim issued certain compensation to Applicant No.1. This order was challenged before the Deputy Collector which was ultimately dismissed on 1<sup>st</sup> October 2010. Thereafter the Respondent No.9 filed a Writ Petition (No. WP 24/2011) challenging the order of Mamlatdar. However, the Respondent No.9 did not press the said Writ Petition and the same was disposed of without any judicial finding on 8<sup>th</sup> April 2008.

**2.** The Applicants further submit that inspite of such record no compensation was paid to the Applicant No.1. Subsequently, in 2009-11, the polluted water containing large quantities of silt was discharged into the disputed property. The Applicants alleged that this effluent was generated as tailings of the ore beneficiation plant existed during the particular period. The Applicants further claim that by year 2011-12 the entire disputed property was badly damaged. Therefore, they have filed this Application with certain prayers for compensation for loss of agriculture, employment (R & R) and also, restitution of their property.

**3.** It is pertinent to note at this stage that during hearing of both Applicants and Respondents agreed that

the only contentions remaining in this Application, in view of the Judgment of the Apex Court in the matter S.L.P. No.432/2012 (Goa Foundation Vrs. State of Goa), are related to damage to the disputed property and compensation aspects resulting from dumping of minerals/rejects on the disputed property. All other contentions and prayers are covered by the Apex Court Judgment and cannot be agitated before this Tribunal.

**4.** The matter was originally filed in National Green Tribunal, New Delhi on 19<sup>th</sup> February 2013 and was transferred to this WZ Bench Tribunal once the Bench started functioning somewhere in August 2013. On 13<sup>th</sup> November 2013 considering the similar matter before the Hon'ble High Court of Bombay, Bench at Goa, in its order dated 17<sup>th</sup> March 2005 in Writ Petition No.443 of 2004, this Tribunal directed the Collector to visit the disputed area and carry out the inspection on following points :

1. Whether the Respondent No.9's Mines has been disposed certain rejection of minerals or any solid waste/material outside the boundaries, particularly in the area of paddy fields which come within the boundary limits of the land of the Applicants ?
2. Whether the Respondent No.9 discharges untreated water filled with silt from the Mines as well as tailings of the beneficiations plant in the paddy fields of the Applicants ?
3. Whether the traditional water source in the perennial stream have been obstructed or interfered



with due to the mining activities of Respondent No.9  
?

4. Whether mining activities of Respondent No.9 has caused damages to the water retaining capacity of the agricultural properties of the Applicants due to accumulation of the silt on the original layers of the soil ?

5. Whether any loss is caused to the agricultural property of the Applicant ? If so, to what extent and whether it is due to mining activities of Respondent No.9 ?

6. Whether the loss caused to the Applicants, if so, can be quantified in terms of compensation and is so, the amount of loss ?

**5.** Respondent No.9 is the main contesting party and has filed affidavit on 23<sup>rd</sup> April, 2013 opposing the Application. Respondent No.9 submits that the entire Application is based on presumption and surmises. The Applicants have no *locus-standie* to file the present Application as they have no legal right over the suit property. They would submit that since the Respondent No.9 was not in immediate need of portion of survey No.51 which fell outside the mining lease, therefore, the predecessors of the Applicants were permitted to do cultivation in that area. The ancestors of the Applicants claimed to have entered into an agreement with Respondent No.9 on 20<sup>th</sup> November 1980 whereby they surrendered the rights over the survey No. 51 in favour of

Respondent No.9 for certain consideration. The Respondents submit that none of the Applicants are factually doing any cultivation over the disputed land since the year 1980. The Respondents further submit that they had deposited a cheque of Rs.10,075/- with Mamlatdar of Bicholim Taluka for payment to the Applicant No.1 in compliance of the order of Mamlatdar dated 4<sup>th</sup> March 2008 but the same was returned to him by the Mamlatdar mentioning that the Applicant No.1 has refused to accept this amount.

**6.** The Respondent No.9 submits that a small quantity of dump/sub-grade was stacked in part of the disputed land in early 1980's. Since then there has not been any stacking or any mining related activity in the said survey No.51. Respondent submits that the location of stacked sub-grade iron ore has been incorporated in the mining plan of the Sirigao iron ore mine, prepared in the year 1980 and approved by the competent authorities. The said dump/sub-grade stack in survey No.51 is outside the mining area boundary. This dumped/sub-grade stack is well stabilised and afforested.

**7.** Respondents No. 9 would further submit that the mining field water is pumped out into the settling ponds constructed in series with filter beds in between. The Respondent-9 claims that there is no beneficiation/wet processing plant at the subject mine and only a dry

screening plant is in operation at this mine which also is located far away from this area and there is no question of generation of mine tailings. The Respondents further submit that the ancestors of the Applicants surrendered their tenancy rights in favour of Respondent No.9 by an agreement dated 20<sup>th</sup> November 1980. Further some of the Applicants are getting direct or indirect benefits from Respondent No.9.

**8.** Respondent-9 argued that the Application is barred by limitation as the same issue was decided and concluded by Mamlatdar by order dated 4-3-2008 and also by the own averments of the Applicants that the dumping of the rejects is started from the year near about 2000 onwards.

**9.** The Respondent No.6 i.e. Goa State Pollution Control Board (GSPCB) filed an affidavit and submits that there are no specific allegations or prayer against them. The inspection report of the GSPCB officials dated 19<sup>th</sup> April 2013 indicates that the ore processing plant of 300 MT/per hour is located partly within the lease and partly outside the lease. The report also indicates that there was no surface dumping being carried out at Sirigao mine. GSPCB further mentions that to minimise the runoff from the overburden dump and mines the certain voluntary measures have been taken by the unit, such as;

- The 14 Nos. of settling ponds for settling the surface run-off during the monsoon.
- The length of 3829 meters (approximately) of Arrestor wall within and outside the mining lease to arrest the wash-off from mines as well as dumps.
- The length of 7600 garland trench to divert surface run-off into mining pit during monsoon.
- The murrum bund of length 1900 M (approximately) to arrest wash-off from mines and dumps.
- The 34 Nos. of filter beds which include one No. concrete filter bed into the mining lease.

**10.** We have carefully gone through the record. Considering the documents on record and also arguments advanced by Ld. Counsel for the parties, we are of the opinion that following issues arise for final adjudication of the present Application.

**1-A)** Whether the Applicants have any locus-standie ?

**1-B)** Whether the Application is barred by limitation ?

**2)** Whether the mining and related activities of Respondent No.9 has resulted into degradation of the disputed land in terms of its agriculture value,

**3)** If yes, whether the Applicants are entitled for any compensation for the environmental damages or restitution of property for otherwise ?

**Issue No.1-A :**

**11.** We have carefully gone through the documents on record. The concept of *locus-standie* in the environmental matters has been elaborated adequately by the Principal Bench of National Green Tribunal in matter of “Goa Foundation and Anr. ..vrs.. Union of India and others (in *M.A.No.49/2013, Application No.26/2012 decided on June 18<sup>th</sup>, 2013*). The present Application is made under Section 14, 15 and 16 of the National Green Tribunal Act and the majority of the prayers are related to restitution and restoration of environment and also damage to the agricultural lands. The Applicants have also sought the compensation for such agricultural loss. These prayers related to restitution, restoration and compensation falls within the ambit of Section 15 of the NGT Act which is reproduced below for easy understanding :

15. Relief, compensation and restitution :-

(1) The Tribunal may, by an order, provide,-

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a

period of five years from the date on which the cause for such compensation or relief first arose;

Provided that the Tribunal may, if it is 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.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

**12.** The Schedule II of the NGT Act list out the separate heads under which compensation or the relief for damage can be claimed and the Schedule II is reproduced below :

### **SCHEDULE II**

**(See Sections 15(4) and 17(1))**

Heads under which compensation or relief for damage may be claimed.

- (a) Death;
- (b) Permanent, temporary, total or partial disability or other injury or sickness;
- (c) Loss of wages due to total or partial disability or permanent or temporary disability;
- (d) Medical expenses incurred for treatment of injuries or sickness;
- (e) Damages to private property;
- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
- (g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;
- (h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;
- (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
- (j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;
- (k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;

- (l) Loss and destruction of any property other than private property;
- (m) Loss of business or employment or both;
- (n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance.

**13.** It is matter of record that the Applicant No.1 had approached the Mamlatdar, Bicholim Taluka and vide order dated 4<sup>th</sup> March 2008 the Mamlatdar had ordered that the Applicant is entitled to get the compensation from the Respondent No.9 as recommended by Agriculture Officer for damages to standing crop from the said paddy field. This particular order was subsequently challenged before the District Court and the challenge was dismissed. Further, it is already on record that the Respondent No.9 approached the Hon'ble High Court of Bombay, at Goa through the Writ Petition No.24 of 2011 which was disposed of as not pressed by the Respondents while keeping the all questions of law open.

**14.** The Applicants would submit that they are the tenants of part of the survey No.51 and have produced the Form-I and XIV showing their tenancy claim. These forms also indicate the details of the crop area which is mentioned as 'paddy'. The Respondent No.9 claims that by the agreement dated 20<sup>th</sup> November 1980, the ancestors of the Applicants have surrendered their tenancy rights and therefore, they do not have any locus in the present Application. We would like to point out at this stage that

this Tribunal is expected to deal with substantial question of environmental arising out of implementation of the enactments listed in Schedule-I of the National Green Tribunal Act 2010 and therefore, the validity or otherwise of such agreement or the issues of legality of tenancy or otherwise are not required to be dealt by this Tribunal. The Order of the Mamlatdar of Bicholim Taluka in case No. MAM/BICH/MINE/1/2006 dated 4<sup>th</sup> March 2008 is on record and it is pertinent to reproduce a part of the order related to the Tenancy aspects which was upheld by the District Court also :

“=====

*I have perused the documents and considered arguments offered by the Lc. Advocates of both parties and I am of the opinion that prima facie the name of the applicants father is appearing on form No.I and IVI of survey No.51/27 of Maem village and part of the portion is acquired by the Konkan Railway Corporation in the year 1992 and whereas agreement executed dated 28-11-1980 by the opponent.*

*If there was any agreement with the opponent of surrounding the tenancy right of the said property by the applicant's father then Konkan Railway would have paid compensation to the opponent or at least would have stopped payment to the applicant, if there was any dispute between applicant and opponent regarding the said paddy field. This very fact proves that applicant is in cultivation of the said paddy field as the tenant.*

=====”.

**15.** And therefore, the conjoint reading of Mamaltdar's order read with Schedule II of NGT Act would reveal that the Applicants are cultivating part of the disputed land, irrespective of whether they have a legal tenancy right or not and as per the provisions of section 15 of NGT Act,



they are entitled to approach this Tribunal for seeking compensation or relief. The sub-heads (l) & (m) of the Schedule II would be relevant in the present case along with sub-heads (j) & (k). Moreover, the report of the District Magistrate dated 16<sup>th</sup> December 2013 also mentions the disputed area, Survey No.51 have 55 subdivisions and some of the area is under agriculture. Considering all these above facts, we are of the considered opinion that the Respondent No.9 has not provided any substantial documents on record to show that the Applicants do not have 'locus' in the present matter. Alternatively, the Applicant No.1 has been granted the compensation for loss of agriculture of the said property by the Mamlatdar and also the present report of the District Magistrate also refers to the agricultural activities carried out by the Applicants at the disputed land. Therefore, we are of the considered opinion that the Applicants have locus in the present Application in the context of provision of section 14, 15 and 16 of NGT Act and decide the issue in Affirmative.

**Issue No.1-B :**

**16.** The learned Advocate for Respondent No.9 strenuously argued that the Application is barred by limitation of time as described under Section 14 and 15 of the NGT Act. It is his contention that the first cause of action i.e. dumping of the mine rejects/sub-grade initiated

occurred somewhere in the year 1980's and the Applicants were well aware of this fact. Not only that, the Applicant No.1 in his affidavit for evidence has stated that he has filed the complaint on October 12<sup>th</sup>, 2000 which itself indicate that the Applicants were aggrieved, even to the adverse consideration, in the year 2000 and therefore, the cause of action as ordered if not earlier but at least prior to October 2000. The learned Advocate also relied on several dates referred in the affidavits of the Applicants wherein the issues related to impact of dumping on water resources, restoration and restitutions were raised as earlier in the year 1998-99. It is his contention that though the Mamlatdar has issued an order on 4<sup>th</sup> March, 2008, the case was registered in the year 2006 itself. He, therefore, opposed the contention of the Applicants related to continuous cause of action and states that this is alien concept.

**17.** We have carefully gone through the pleadings and arguments in the matter. It is on record that the Mamlatdar had issued order for compensation on 4<sup>th</sup> March 2008. Being aggrieved with this order, the Respondents had challenged said order in the District Court which appeal was dismissed. Subsequently, the Respondent No.9 filed a Writ Petition before the Hon'ble High Court Bombay at Goa which was subsequently not pressed and withdrawn. Thereafter, Respondent No.9

claim to have issued the cheque of the compensation amount to the Mamlatdar's office which was returned by the Mamlatdar's office with remark that the amount was refused by the Applicants. However, no such refusal letter or communication made by the Applicants is placed on record.

**18.** Countering this argument, the learned Advocate for the Applicants submits that it is true that the mining activity is going on since more than 25 years. He also submits that since the year 2000, the dumping of rejects/sub-grade and also discharge of polluted effluents was noticed intermittently. He further states that the major violations and the damages were noticed since the year 2009 up to 2012, when the mine was in operation. He also submits that by the year 2011-12, the Respondent No.9 started discharging the untreated water from the mine full of the silt into the disputed property only since the year 2012 and hence the disputed property was damaged. It is his contention that the National Green Tribunal Act, 2010 has a clear provision regarding the limitation and the words first cause of action needs to be essentially read with the term "such disputes" as far as Section 14 is concerned whilst cause for such compensation or relief for Section 16 of NGT Act. He therefore, contended that it is necessary to define what the dispute is and cause for such compensation or relief and

then only, the date on which the cause of such compensation or relief first arose needs to be defined. In the instant case, he submits that in the present case, the cause of such compensation or relief is the unauthorised discharge of untreated water which contained significant constitution of silt into the disputed property which was practiced by the Respondent No.9 from 2010-11. He, therefore, contends that the cause of action needs to be reckoned by the year 2010-11 and therefore, this Application filed under Section 15 which is registered in National Green Tribunal on 19-2-2013 is well within the prescribed time frame.

**19.** A close reading of section 15 of the NGT Act indicates that no Application under Section 15 shall be entertained by the Tribunal unless it is made within a period of five (5) years from the date of which the cause for such compensation or relief arose. It is contended by the Applicants that the discharge of water from the mines containing silt is the cause of action and such cause of action is occurring since the year 2010-11. On the contrary, the Respondent No.9 submits that there is no wet beneficiation plant in the premises of Respondent No.9's mine. Respondents have submitted that the practice of dumping the sub-grade/reject of the mine at the disputed land is continued since 1980. They have refuted claim of the Applicants that mine water containing

silt is discharged from the Respondent No.9's mining activities. We noticed that Section 15 of NGT Act is very specific and deal with the cause for such compensation or relief. As in the present case, the cause of such compensation i.e. the mine discharge is claimed to be continued since 2010-11, though it is contradicted by the Respondents, the Respondents have failed to adduce any record or evidence to this effect and rather tried to develop their arguments only based on the dates and submissions made by the Respondents in their affidavit or communication to authorities.

**20.** Considering the contention of the Applicants that the alleged discharge of silt laden mining effluent gushed out from Respondent No.1's mine from the year 2010 onwards has affected the agricultural lands in question, the cause of compensation could be construed as arose only after 2010. Though there might be certain references to the agricultural effects/damages, prior to this period, such references will not necessarily constitute cause for such compensation or relief as cause of action that "first arose" since the complete loss of agriculture is first reported in the year 2012 and the cause for such alleged damages is claimed to be after 2010. And accordingly, we hold that the Application is well within the period of five (5) years prescribed under Section 16 of the NGT Act and therefore, the Application is considered well within

limitation and will be dealt further. As such, the issue No.1-B is answered in the **Affirmative**.

**Issue No.2 and 3 :**

**21.** Once the issues of the *locus-standie* and limitation are resolved, we will now proceed with the core issue of assessing the damages, if any, and the scale and nature of the compensation/restitution required in this particular Application. It is already on record that the Mamlatdar had assessed the damages to the agriculture crop of Respondent No.1 in the year 2008 which was confirmed by the District Court.

**22.** We have carefully perused the report of the Collector dated 16-12-2013 which is on record. The report is quite elaborate and has confirmed that the Respondent No.9's-Mine has disposed of certain rejection of minerals or solid waste/material outside the boundaries particularly in the area of paddy fields which come within boundary limits of land of Applicants. The report indicates that the rejection of dump is spread over on area of 10752 sq. mtr. and the approximate quantity of rejection of dump is about 21,504 cubic meters. The report also indicates that presently the mining activities have stopped and therefore, it is not possible to ascertain whether Respondent No.1 discharges untreated water containing silt from the mines as well as tailings of the beneficiation of the plant in the

paddy fields of the Applicants. However, the report also indicates that the fields in S.No.51, disputed land, is silted with fine particles of mine rejects. The report further mentions that the nallah existing at the south of property is filled with mining rejection silt which was used for irrigation of paddy field. Also, the natural storage tank is filled up with the mining silt. The report mentions that the high silt in the paddy field has damaged water retaining capacity of the soil leading to increase in density of the soil and making it non-porous resulting in increased levels of some of the mineral elements that are toxic to the plant growth. The report also indicates that there is a loss to the agriculture property of the Applicants to the extent of 100 per cent. The extent of damage is to the level i.e. rendered unfit for agriculture cultivation. The report further quantifies that the total area affected is about 4.2050 ha and the loss to the Applicants is to the extent of 100 per cent yield minus cost of cultivation. This compensation amount is pegged at Rs.7,84,997/- by the detail calculation in the report. The Applicants have opposed this report in terms of the cost of cultivation considered per ha which is ranging from Rs.15,000/- per ha to Rs.25,000/- per ha. The Applicants submit that they are working in their own farms and also have their own bulls and therefore, the cost of cultivation considered in report is far high and not acceptable. The Respondent No.9 opposed

the report itself by claiming that the report is based on ocular observations and no scientific analysis has been done by the agricultural department and the Collector Office. They also submit that the report lacks the scientific procedure and also assessment to previous records and therefore, it cannot be relied upon.

**23.** We have carefully gone through the order of the Mamlatdar of March 2008 and the report of the Collector dated 16-12-2013. The Mamlatdar's order referred to the report of the agriculture department which stated that :

“Report from Z.A.O. has been obtained and Z.A.O. vide his letter dated 19-8-2005 has stated that the applicant cultivates his field during kharip seasons while rest of the area has been kept fallow since last 30 years. Further he stated that originally local varieties were cultivated during kharip and high yielding varieties during rabi seasons. Further he justified discontinuation as a resulting due to disruption of traditional drainage irrigation network due to mining silt deposition. This includes drainage of access water from field during kharip seasons to the river close by which also appears highly silted up. Besides M/s. Chowgule has also dumped mining rejects in some of the portion. A total loss is estimated at Rs.10,075/-.

**24.** The report of the Collector is also quite elaborate and do not have abnormal infirmities and inaccuracies though certain assumptions must have made to arrive at the quantification of damages and compensation. The uncertainty in environmental matters, particularly assessment of damages and taking precautionary measures has been well documented in the judgment of



Apex Court in "A.P. Pollution Control Board Vrs. Prof. M.V. Nayudu (Rtd.) & Ors." wherein it has been held that the uncertainty in the environmental matter needs to be accepted based on the precautionary principle. We, therefore, have no hesitation in accepting the finding of the report of the Collector. At the same time, we also find some merits in the argument of the learned Advocate for the Applicants that the Applicants are themselves working in the agricultural land since long, therefore, the cost of cultivation is considered in the report is little inaccurate. We are of the opinion that the cost of cultivation considered in the report need to be reduced by 50 per cent while arriving at the final assessment of the losses and damages. It is noticed that the loss of cultivation has been considered by Collector since year 2000, however, no reason for consideration of such time frame has been provided in the report, particularly when it is the stand of the Applicant that the influx of silt laden effluents from the Respondent's mine since year 2010. We, therefore, are of the opinion that such losses needs to be considered w.e.f. the year 2010 and not year 2000. The loss of agriculture needs to be considered in holistic manner involving remediation measures, additional requirement of fertilizers and nutrients; and also, adequate drainage of the agricultural lands. It is necessary that remediation of such agricultural land having fine silt is properly done by

adding natural humus to increase its water retaining capacity. Further, additional dose of fertilizers and nutrients is required to bring the agricultural land to its original status and therefore, the restitution should include all such aspects besides the compensation as referred above.

**25.** We are, therefore, inclined to allow this Application with following directions :

- 1.** The Respondent No.9 shall pay the compensation towards loss of agriculture as presented in Collector's report, but with revised calculation based on 50 per cent of the costs of cultivation considered in the report, for a period of 2010 to 2015.
- 2.** The Respondent No.9 shall also pay Rs. 2,00,000/- per Ha of affected land owners towards cost of remediation and restitution of the damaged agricultural lands including additional dose of fertilizers, nutrients and humus etc .
- 3.** Collector North Goa and the District Agricultural officer shall provide necessary assistance and technical expertise to the Applicants for such restitution activities.
- 4.** The above amount shall be deposited by Respondent No.9 with Collector, North Goa within period of eight (8) weeks. The Collector, North Goa shall distribute the compensation amount through issuance of Demand Draft or direct transfer to Bank Accounts of the

Applicants, if such account numbers are available.

5. The compliance report shall be submitted by the Collector, after three (3) months.

The Application is accordingly disposed of with no Costs.

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

....., EM  
(Dr. Ajay. A. Deshpande)

**Date : April 8<sup>th</sup>, 2015.**

ajp

NGT