

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION NO.35 OF 2013

CORAM :

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

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

In the matter of:

1. CONSERVATION ACTION TRUST,

Public Charitable Trust registered
Under provisions of the Bombay
Public Trust Act, 1950 and having
Its office at 5-Sahakar Bhavan,
1st Floor, LBS Marg, Narayan Nagar
Ghatkopar (West)
Mumbai-400086.

2. MR. DEBI GOENKA,

B 502, Glengate,
Hiranandani Gardens, Powai
Mumbai-400076.

APPLICANTS

VERSUS

1. UNION OF INDIA

Through the Secretary,

Ministry of Environment and Forest,
Paryavaran Bhawan, CGO Complex,
Lodhi Road,
New Delhi-1100003.

2. STATE OF GUJARAT

Through Additional Chief Secretary
Forests and Environment Department
Block No.14, 8th Floor, Sachivalaya,
Gandhinagar, Gujarat.

3. GUJARAT STATE COASTAL ZONE MANAGEMENT AUTHORITY (GCZMA),

Through the Chairman
Block No.14/8th floor,
New Sachivalaya, Sector-10A,
Gandhinagar.

RESPONDENTS

Counsel for Applicant(s):

Mr. Jai Chabria, Ms Shreya Parekh i/b Hariani & Co. Mr. Vasu Sutaissie, Mr Ashish Dhanke, Mr. Varun Sutawane, Mr. Mahesh Ravi Iyer i/b Hariani & Co.

Counsel for Respondent(s):

**Ms. Shweta Busar holding for Mr. Ranjan Nehru Mr. V.R. Sarayu, Mr. Sudhir Kumar Chaturvedi for Respondent No.1.
Mr. Parth Batt (Mr R.D. Kamboj CCD MNP, Mr. G.Yadaiah CCF, Junagadh Circle) for Respondent No.2
Mr. Viral K. Shah for Respondent No.3.**

DATE : OCTOBER 17th, 2015

JUDGMENT

1. By filing this Application, Applicants are asking for certain directions against the Respondents, who are State Government Authorities, to carry out geo mapping of the Mangroves area in State of Gujarat, an issuance of Notification as 'Reserved Forests' under provisions of the Indian Forest Act, 1927 for various areas of Mangroves by the Forest Department, after completing entire exercise which shall be expeditiously carried out and that in the meanwhile the Mangroves along the coastline of State of Gujarat be not allowed to be destroyed by any one. The Applicant No.1 claims to be Charitable Trust and the Applicant No.2 claims to be an Environmentalist, as well as concerned with activities of the organization of the Applicant No.1. The Application filed by them is under Section 14 read with Sections 15 and 18 of the NGT Act, 2010.

2. Briefly stated, Applicant's case is that coastline of State of Gujarat is large, including Navlakhi, Kandla Port, Tuna Bander, Mundra and Hazira Harbour, with extensive Mangrove cover. A large tracts of mangroves are gradually being destroyed for

non-forest use of the land or island and, therefore, such Mangroves are endangered, which forest areas cannot be allowed to be converted for land used without permission under Sub Section (2) of the Forest (Conservation) Act, 1980. A total area approximately 7770Ha (Navlakhi Cher Forest) was notified as 'Reserved Forest'. Navlakhi is an important coastline of State of Gujarat and there are major industries in the shore-front, which previously were saltpans. Still, certain areas around the Mangroves Reserved Forest of Navlakhi village, are flanked by the saltpans. A forest cover is destructed without any proper exercise of control by the Respondents. On or about August 7th, 2013, the Applicant No.2 visited the site and came to know that a large area of land was cut on one side of island of Navlakhi, which denuded large tract of Mangrove forest. He photographed the status of such destruction to buttress the Application. The Applicants were further shocked to notice that a clear violation of provisions of the Forest (Conservation) Act, 1980. On 19th September, 2009, the Respondent No.2 permitted a private individual to use 5000Acres of land, which came within boundaries of Reserved Forest for use of non-forest

purpose, namely, as saltpans. The complaints filed by the trustee (Applicant No.2 of the Applicant No.1), to the Authorities (Respondents), were unheeded. The destruction of natural resources with active connivance by the Respondents, amounts to breach of 'Public Trust Doctrine'. The natural forest cover of Mangroves, is depleting due to frequent permissions granted by the Authorities and, therefore, the Applicants seek directions for protection and pre-reservation of Mangroves, which according to them, are classified as area in CRZ-I, under the Coastal Zone Regulation Notification-2011, CRZ, which cannot be developed or used for commercial exploitation. The Respondent Nos.1 to 3 are legally not at all empowered to permit conversion of Mangroves area by giving leases or use thereof for saltpans, which will destruct the Mangroves lying underneath to saltpans, that will be covered over and above green cover of the Mangroves. Hence the Application.

3. By filing affidavit in reply on behalf of Respondent No.2, Shri. R.D. Kamboj, CCF, states that the averments of the Application are incorrect and untrue. The saltpan activity has been permitted

in notified Reserved Forest area of State of Gujarat. Moreover, Saltpan activity is permissible activity under the Coastal Regulation Zone-I. The order dated 19th September, 2009 granting lease to JPCL for saltpan activity in respect of 5000sq.mtr. area does not fall within Reserved Forest area as alleged by the Applicants. The map of Forests (Reserved) is prepared by the Settlement Officer, under Section 20 of the Indian Forest Act, 1927, declaring reserved forest area for district Rajkot, Maliya Taluka, Mouje: Navlakhi Cher Forest and clearly excludes the area which is alleged in the Application. The activities of Saltpans and manufacturing thereby carried out by JPCL in the said area as per Report of Range Forest officer dated 22.03.2014, are not within boundary limits of Navlakhi Cher Forest, as shown in the record of District Inspector of Land Records (DILR) and Forest Department. Therefore, the Applicants have no cause of action to allege that there is violation of provisions of the Forest (Conservation) Act, 1980 in any manner. The Forest Department subsequently noticed that 41.56Ha area was diverted to Dharmji Morarji Chemicals Ltd, as per the Government of India, Ministry of Environment and Forest (MoEF)

letter No.8-49/95-FC dated 8th April, 1996 and 117 Mangrove plants were found cut down on 17.7.2013. The Forest offence was, therefore, registered against two (2) persons, who had cut those Mangroves. The Forest Department has recovered amount of Rs.10,000/- from them for compounding of the offence. In view of latest report of the Forest Survey of India (FSI), published in 2011, indicating status of the Mangroves in India, the fact that coastal Mangrove area is increased from 911sq.kms to 1058sq.kms in between 2001 to 2011 along coastline structure of Gujarat, is clear and, therefore, allegations that there was reckless destruction of Mangroves in the State of Gujarat, is untrue. On these premises, the Respondent No.2 sought dismissal of the Application.

4. By filing reply certain photographs and additional affidavit, the Applicants also supported the Application in order to show that subsequent destruction of Mangroves had taken place in the State of Gujarat. The Applicants further relied upon various orders passed by the Hon'ble High Court of Bombay relating to saltpans, destruction of

Mangroves alongside seashore of State of Maharashtra.

5. Dr. A. Mehrotra, Director, Ministry of Environment and Forests (MoEF), filed affidavit on behalf of the Respondent No.1, in order to resist the Application. According to him, the MoEF examined question of transfer of 5000Acres of Reserved Forest, as sought by the State of Gujarat, to private party for saltpan production, which was considered by the MoEF. A team was constituted on 13.8.2013. The Team conducted site inspection and prepared Report dated 11.12.2013, of which Dr. A. Mehrotra was also the Member of the said team. The site inspection shows that:

- a) Area allocated to different salt works units and other units of Government of Gujarat in the area mentioned in the letter of Shri. Kunvarjibhai Bavaliy along with map.
- b) Status of Forest land in these allocated areas (i.e. notified forest/deemed forest/mangrove forest) in terms of definition of forest as per Hon'ble Supreme Court's order dated 2.12.1996 therein.
- c) Forest/Deemed Forest/Natural growing mangrove area within allocated area where approval has already been granted under the Forest (Conservation) Act, 1980 and forest/deemed

forest/naturally growing mangrove area within allocated area, allocation has been made without approval under the Forest (Conservation) Act, 1980.

d) Measures taken so far by the State Government for stopping the violation of the Forest (Conservation) Act, 1980.

His affidavit further shows that further directions were given to stop destruction of Mangroves and violation of the Forest (Conservation) Act, 1980. The Report shows that the MoEF, had not received any proposal for grant of permission to State of Gujarat to convert 5000Acres of Reserved Forest land cover of Mangroves, particularly, notified Mangrove areas. No permission has been granted for non-forest use of the said Forest area of 5000Acres for salt production. The Committed noticed that there is some evidence of violation of the EC conditions, including destruction of Mangroves by M/s Adani Port & SEZ Ltd, to whom Show-cause Notice was issued on 30th September, 2013. Thus, the MoEF has taken due cognizance of the complaint made by the Applicants.

6. By filing reply affidavit, Mr. Hardik Shah, Director (Environment) & Member Secretary of

Gujarat Coastal Zone Management Authority (GCZMA) on behalf of Respondent No.3, the Application is opposed on various grounds. First objection to the Application, is regarding 'locus standi' of the Applicants. For, the Application itself shows that the Applicant No.1, is a Public Trust dealing with Public Interest Litigations affecting State of Gujarat in general and Applicant No.2 –an environmentalist as well as –trustee of the Applicant No.1. Secondly, the Application does not fall within ambit and cope of Section 15 read with Section 18 of the NGT Act, 2010, inasmuch as neither of the Applicants is affected directly or indirectly by any action or inaction on part of the Respondents. They are not entitled to claim any compensation or relief, which is permissible under Section 15 of the NGT Act, 2010. They are not asking for any adjudication of substantial question relating to environmental dispute under Section 14(1) of the NGT Act, 2010, and, therefore, before adjudication of such a question further dealing with the matter under Ss. 15 and 18 of the NGT Act, 2010, cannot be entertained.

7. Apart from above, preliminary objection, the Respondent No.3, has come out with a case that

destruction of Mangroves is stayed as per order of the Tribunal w.e.f. 1.1.2014, which is duly informed to the concerned authorities. A meeting was held on 2.11.2013, to discuss the issues of destruction of Mangroves as well, grievances made by the Applicant. The Member Secretary of Gujarat Ecology Commission, was asked to examine complaints of the Applicants and to submit a detail report. The directions under Section 5 of the Environment (Protection) Act, 1986, were issued on 25.02.2004, by the Additional Chief Secretary to the Gujarat Maritime Board, to Adani Port, to the Kandla Port Trust, and to the Pipavav Port. The Gujarat Ecology Commission was asked to complete the assignment with participation of Bhaskaracharya Institute of Space Application and Geo-Information (BISAG), vide communication dated 24.3.2014, which has capacity to do such mapping through Remote Sensing Technology, in order to verify about Mangrove destruction in the state of Gujarat. The report was prepared and it is placed on record. The report does not show destruction of Mangroves in any notified Reserved Forest.

8. We have heard the Applicant No.2 in person, as well as learned Advocates appearing for the Applicant and Applicant No.2 also. We have heard learned Advocates for the Respondent Nos.1 to 3.

9. Before we proceed to deal with the matter of the Applicants, let it be noted that M/s Adani Port and SEZ Ltd. and any other Ports of Mundra, Kandla, Tunda and Hazira etc. within Navlakhi area, are not added as parties to the Application. In fact, they would be directly affected if any adverse decision is rendered in the instant Application. We cannot ignore the fact that the principles of natural justice must be followed as required under Section 19 of the NGT Act, 2010, though in a given case, shackles of procedure of Law under the Code of Civil Procedure, 1908, may be removed, in order to meet the ends of justice. In other words, the principle "***Audi alteram partem***" ought to be followed and, therefore, without hearing affected party such as Mundra Port, Kandla Port, Tunda Port, Hazira Port and M/s Adani Port and SEZ Ltd etc. within Navlakhi area, final adjudication of the Application may not be in keeping with the Principle of nature justice. It is improper, illegal and impermissible to surmount these legal

difficulties. The Applicants have not taken steps to add necessary parties, which were required to be brought on record without whom final and effective adjudication could not have been made. The Application must fail on this preliminary ground.

10. Perusal of record shows that Notification issued by the Competent Authority, declaring area of Reserved Forest communication dated 3rd May, 2013, issued by the MoEF and communication dated 11th December, 2013, to M/s Adani Port Pvt Ltd, M/s Mundra Special Economic Zone Ltd and to Additional PCCF (Central), Bhopal, go to show that the permissions were granted to the Ports under certain conditions, including CRZ Clearance for multi-purpose Jetty Ports and there was site inspection carried out. By communication dated 11th December, 2013, it was informed to the Additional PCCF (Central) Bhopal by the MoEF as to whether salt manufacturing units allocated by the District Collector, without approval of the Forest (Conservation) Act, 1980, as part of Navlakhi (Cher/Mangroves forest) as notified under the Indian Forest Act, 1927. The basic issue is whether any part of Cher/Mangroves Forest is declared under the

Forest (Conservation) Act, 1980 on 29.9.1960, as allowed to be converted for use of saltpan for other industrial activity without approval of the Competent Authority.

11. The subsequent site visit by the Committee, indicated only a small part of destruction of Mangroves at Adani Port for which due action was taken by the Competent Authority and penalty was recovered. In case, the Applicants are aggrieved by such action, they have further remedy to challenge the same in case of inadequacy of the remedy, if they so desire.

12. Now, the map which is placed on record and is duly authenticated (Annexure-R/1), gives area of edges and boundaries of Navlakhi Port area, notified forest area, measured by DILR in 2010 and area indicated by FSO Report in 2013. Actual basis to identify the Reserved Forest called either Forest Area, is measured/carried out by the DILR in 2010, inasmuch as area may vary due to natural changes during intervening period. This map is an important document. The map shows that the Reserved Forest is surrounded by creek on north side. It is bounded by saltpans and Varsamedi Creek, on south side and

road sanctioned to JPCL on eastern side. The Navlakhi Port area is 19200.04 Gunthas (Hectre-7770.00) area. The communication dated 21.6.2011, issued by the Under Secretary, Forest and Environment Department to the Principal Secretary, Revenue Department, Sachivalaa, Gandhinagar, shows that the land allotted by the Collector, as per letter dated 19.09.2009, to Jaydip Chem Food Pvt Ltd. Maliya, is not within forest area. It also shows that the lease was granted to Jaydip Chem Food Pvt. Ltd for 5000acre of land in Navlkahi area on 3.12.2009.

13. Thorough examination of the record shows that though a part of destruction of Mangroves forest was done at Adani Port, yet action is taken by the Competent Authority against the culprits. The photographs filed by the Applicants (P-213), are likely to be of that area.

14. All said and done, the Applicants failed to show that the map of Navlakhi Reserved Forest area, is substantially affected due to alleged conversion activity. It appears that a very small tract of conversion of land had taken place illegally, by culprits near Adani Port, but the Authorities have

taken penal action against the culprits. Secondly, the Applicants have not sought adjudication of any substantial question relating to environment, as per Section 14(1) of the National Green Tribunal Act, 2010. Unless and until, such a question is decided and the Applicants are found to be the victims of degradation of environment, or otherwise victims of environmental damage or entitled to compensation, it is difficult to switchover to the remedies available under Section 15 of the National Green Tribunal Act, 2010, which are enter-dependent after adjudication of question involved in Section 14(1) read with Section 18 of the National Green Tribunal Act, 2010.

15. The Applicants have placed on record various orders of the Hon'ble High Court of Bombay in the (1) Writ Petition (Lodging) No.3246 of 2004, with W.P. No.1470 of 2003, with W.P. No.2208 of 2004 "**The Bombay Environmental Action Group and Anr vs. The State of Maharashtra and Ors**" (dated October 6th, 2005).

(2) PIL No.218 of 2013 "**Navi Mumbai Environment Preservation Society and Anr vs. Ministry of Environment & Ors**", (Order dated 29th April, 2014 and Order dated 20th June, 2014).

16. With due respect, we may only state that all these Orders deal with the Mangrove protection in the area adjacent to certain parts of the State of Maharashtra and directions were given for mapping of the area. These directions issued in a particular state of circumstances, cannot be applied “*mutatis mutandis*” in the present case and particularly when the Applicants have approached the Tribunal at belated stage, and have not joined necessary parties and have made only general prayers in the Application.

17. In the result, the Application fails and is accordingly dismissed. No costs.

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(Justice V. R. Kingaonkar)

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(Dr.Ajay A. Deshpande)

DATE: OCTOBER 17TH 2015.
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