

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**W.P. (c) No. 35064 of 2018**

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

State of Kerala and others : Respondents

**Reply Affidavit of the Petitioner to the Counter Affidavit Filed
on Behalf of the 1st Respondent**

I, N.Badusha, S/o. late Khansa aged 68 years presently residing at Chithralakkara House, Naikatty, P.O., Sulthans Bathery, Wayanad 673 592 having come down to Ernakulam do hereby solemnly affirm and state as follows:-

- (1) I am the President of the Wayanad Prakrithi Samrakshana Samithi, the petitioner in the above writ petition. I am conversant with the facts of the case.
- (2) It is submitted that the above writ petition has been filed inter alia seeking to quash Ext. P10 and P11. It is submitted that on behalf of the 1st respondent, a counter affidavit is filed and a copy has been served on my counsel. I have read and understood the averments made in the above counter affidavit of the 1st respondent. All the averments made in the counter affidavit of the 1st respondent, in so far as they are contrary to or inconsistent with the facts stated hereunder are incorrect, untrue and hence denied.
- (3) It is submitted that the signatory to the counter affidavit filed is not competent to file the above counter affidavit on behalf of the 1st respondent. The deponent of the affidavit is only a field officer of the Kerala Forest Department and has not produced authorization issued by the Chief Secretary to the Government

to file the above counter affidavit. Hence the counter affidavit filed on behalf of the 1st respondent is liable to be rejected, as incompetent. Further, the deponent has not understood the nature of the public interest litigation and has filed the counter affidavit suppressing relevant details, detailed hereunder.

- (4) With reference to the averments contained in paragraph 2 of the counter affidavit filed on behalf of the 1st respondent, it is submitted that they are not fully correct and hence denied. The averment to the effect that eco-tourism activity is not a non-forest activity is incorrect and hence denied. The Ministry of Environment, Forest and Climate Change, Government of India (here in after referred to as the MoEFCC for brevity) has published a Handbook of Forest (Conservation) Act 1980 (hereinafter referred to as the Act for brevity) and Forest (Conservation) Rules with Guidelines and Clarifications on their website, as per which, eco-tourism activity is a non-forest activity. A true copy of the relevant pages of the above Forest (Conservation) Rules with Guidelines and Clarifications is produced herewith and marked as **Exhibit P14**. The other contention in paragraph 2 based on Section 2 of the Act, 1980 is argumentative, untenable and hence denied.
- (5) With reference to the averments contained in paragraph 3 of the counter affidavit filed on behalf of the 1st respondent, it is submitted that they are not fully correct and hence denied. The averment that as part of management of forests visits to places of national beauty is being carried out mainly for creation of awareness to visitors and generating gainful employment to the forest-dependent communities including the poor tribes of the area through vana Samrakshana Samiti under the participatory forest management program (PFM) as per the guidelines issued by the Ministry of Environment and Forest, Government of India is unfounded, opposed to facts and hence denied. The averment that Vana Samrakshana Samitis (VSS for short) are committees

under participatory forest management involving local public in the protection and conservation of forest including stakeholders of a particular patch of forest is also baseless and hence denied. The averment that the visitation to the Kuruva Island is managed by VSS with an objective of increasing nature awareness among the general public and to make the area free from ecological degradation and pollution and for generating employment which are included in the other like purposes in explanation (b) under Section 2 of the Act is not correct and hence denied. It is incorrect to state that ecotourism is not a non-forest activity. It is also not correct to state that what is done in Kuruva is daytime restricted visitation. It is incorrect to state that there is no provision in the Act prohibiting visitation to the reserve forest.

- (6) The averments in paragraph 4 of the counter affidavit of the 1st respondent are not fully correct and hence denied. The averment that the visitation to forest areas in the State is carried out with twin objectives of conservation of forests through people's participation and betterment of local forest-dependent communities by generating employment through PFM programs is untenable and hence denied. It is submitted that visitation to forest areas whether regulated or unregulated is adversely affect the ecology, bio diversity and the averments to the contrary are emphatically denied. The contention that regulated visitation to forest areas is part of conservation activity and is mainly meant for improving the livelihood of the local forest-dependent people by generating employment is also not correct and hence denied. The State government is not justified linking visitation to forest area, generating employment, livelihood of forest-dependent communities as the as the rights of the scheduled Tribes and other forest dweller are protected under the scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

- (7) The averments made in paragraph 5 of the counter affidavit of the 1st respondent are not fully correct and hence denied. It is submitted that Exhibit R1 (a) does not provide for eco tourism. It is submitted that Exhibit R1 (B) cannot legalise eco tourism activity in a reserve forest as it is a non-forest activity, requiring prior approval of the Government of India. It is submitted that participatory forest management in Kerala was introduced by Exhibit P 13 G.O dated 16.01.1998 and the objectives are stipulated in the guidelines. The objectives of the participatory forest management includes management of fires to reduce forest degradation, introduction of sustainable non timber forest produce harvesting practices, to reverse the declining trend of growth of valuable non timber forest produce, stopping further encroachment into forest areas, curbing illicit timber harvesting leading to loss of revenue, et cetera. Since ecotourism activity is a non-forest activity, it requires prior approval from the Government of India. Therefore, the contentions raised in paragraph 5 are untenable, baseless and hence denied.
- (8) It is submitted that the averments made in paragraph 6 of the counter affidavit of the 1st respondent is not fully correct and hence denied. The eco tourism activity conducted at Pakkom-Kuñuva is unauthorised and is clearly against Section 2 of the Act. The deponent has not stated as to how one entry point at Palvelicham is managed by the District Tourism Promotion Council (DTPC for short). The deponent has not produced relevant documents relating to the permission given to the district tourism promotion Council to start an entry point at the river bank of Kabani. The averments in paragraph 6 would show that the DTPC has developed the river bank of Kabani as a tourism centre. The deponent has not stated as to who are the beneficiaries of the tourism centre operated by the DTPC and whether any people belonging to forest-dependent community has been engaged by them.

- (9) It is submitted that the averments in paragraph 7 of the counter affidavit of the 1st respondent is not fully correct and hence denied. It is not correct to say that where ever visitation into forest area is in place, those areas are kept neat and clean by the local community and is managed well and thousands of people who were depending on forest for their livelihood are earning their daily bread by the remuneration received from the ECO tourism points where their services are utilised as guides, keepers, watchers, et cetera. It is relevant to point out that no responsible tourism practices are followed in most of the tourism centers in India and the tourism activity in those areas had negative impact over the local people and ecology. Tourism is a commercial activity and cannot be practiced in forest area, in the guise of creating awareness to people and livelihood of local dependent community. It is submitted that the State Government must be compelled to disclose before this Hon'ble Court regarding the steps taken to impart environmental education in schools/colleges and also regarding the many welfare measures taken to bring forward the people belonging to Scheduled Caste and Scheduled Tribe communities. (underline provided to emphasize). The averment that the assessment of carrying capacity is being done on a priority basis, 1st for 30 sites where a number of visitors is more would establish that the Kerala Forest Department has not conducted any carrying capacity studies on any of the eco tourism sites. In the absence of any report on the carrying capacity of the respective eco tourism sites, the Kerala forest department is not justified relying on other methods to determine the number of visitors allowable at each eco tourism site. It is submitted that the averments in paragraph 7 regarding the determination of carrying capacity study is faulty and has not accessed the damage that is likely to be caused to the ecology and the habitat. It is not correct to state that based on the parameters laid down by the Government of India and on the basis of

objective data and on the existing formula used for assessing the carrying capacity into some areas, the daily number of visitors has been increased to 950 per day temporarily as per Exhibit-P 10. It is submitted that the deponent has not addressed the ecological damage that would be caused by allowing tourism at Kuruva Island.

- (10) It is submitted that the averments in paragraph 8 of the counter affidavit of the 1st respondent is not fully correct and hence denied it is submitted the deponent has not disclosed as to how many eco tourism sites in Exhibit P2 list falls within protected areas, to which Exhibit P1 would apply. It is submitted that many of the entries in Exhibit P2 falls within National Park, tiger reserves, sanctuaries and hence Exhibit P1 is applicable to many of the eco tourism sites mentioned in Exhibit P2. It is also submitted that the deponent has not furnished relevant details like approval of working plan or management plan of Forest Divisions having eco tourism as a component in it. Therefore, the petitioner is filing a separate petition along with this affidavit seeking the 1st respondent to provide details regarding various eco tourism sites, whether the eco tourism site falls within protected area, whether the management plan/working plan of the Forest Division containing eco tourism as a component has been approved under Section 2 of the Act, whether carrying capacity study has been done over those area and whether any restriction has been imposed about the number of visitors in each eco tourism points, which may kindly be allowed in the larger public interest. It is evident from the averments that the number of visitors was increased consequent to an agitation and protest led by the MLAs representing Kalpetta and Mananthvady constituencies and not based on any objective consideration of ecological parameters. At any rate, in Exhibit P10 and P11, there is no consideration of relevant ecological facts. Hence, the explanation offered in paragraph 8 is liable to be rejected.

- (11) It is submitted that the averments in paragraph 9 of the counter affidavit of the 1st respondent is not fully correct and hence denied. The 1st respondent has not stated as to why Exhibit P4 found not suitable and requiring revision. It is evident that the revised guidelines prepared were submitted to the government on 01.10.2018 and there is no explanation offered as to why it has not been approved or rejected. It is also evident that the Kerala Forest Department felt the need for framing guidelines for managing eco tourism, however the Government has not approved the proposal made by the Forest Department, which is clearly indefensible.
- (12) It is submitted that the averments in paragraph 10 of the counter affidavit of the 1st respondent is not fully correct and hence denied. As stated above, many of the eco tourism sites mentioned in Exhibit P2 falls within the protected areas and the 1st respondent is not justified in stating to the effect that the eco tourism sites does not come within the category of protected areas these guidelines is not directly applicable to this area. It is not correct to state that eco tourism under the Forest Development Agency is what is envisaged in the National Forest Policy 1988. It is also not correct to submit to the effect that eco tourism is mainly meant for peoples involvement, protection and management of forests and improving the livelihood of the local people especially, the Scheduled Tribes by generating employment. As stated above, eco-tourism is a non-forestry activity requiring prior approval under Section 2 of the Forest (conservation) Act, 1980 and the averments to the contrary are emphatically denied.
- (13) It is submitted that the averments in paragraph 11 of the counter affidavit of the 1st respondent is not fully correct and hence denied. It is submitted that the working plan of South Wayanad Forest division for the period 2012-21 contains eco-

tourism as a component and has not been approved by the Government of India. It is not correct to state that the prescription for Eco tourism will not have any negative impact on the proper management of the forests.

- (14) It is submitted that the averments in paragraph 12 of the counter affidavit of the 1st respondent is not fully correct and hence denied. It is not correct to submit that ecotourism per se is neither forestry nor a non-forestry activity. The two classes of activities, forest activity and non-forest activity are mutually exclusive and there cannot be any class between the two. Daytime visitation to the reserved forest is impermissible under law and no orders are produced along with the counter affidavit authorising general public to enter the reserved forest. The averment that day time visitation to Kuruva was going on for past several decades is unfounded and hence denied. The collection of fees in the name of eco tourism is nothing commercial activity making a profit/revenue, in the name of dependent communities. It is submitted that to the knowledge of the petitioner no assessment of ecology is done, no carrying capacity is done, the need of the local community is also not assessed and the issue of man animal conflict is also not addressed. The officers of the Kerala Forest Department and the Government have not changed the conservation practices and the age old practices are followed. Though Participatory Forest Management is introduced by the Kerala Forest Department, Forest Range Officer (FRO for short) is the person controlling the Vana Samrakshana Samithi (VSS) or the Eco Development Committees (EDC). Unless the commands of the FRO is complied with, the forest dependant community will not get their due wages. The needs of the local community are not always taken in to consideration and a new management strategy is thrust upon the forest dependent communities in the name of participatory forest management. It is submitted that the

avermment that the Department is also aware of the fact that the forest and people cannot be and need not be separated to water tight compartments except to the peril of the both is a welcome statement, but not followed in its spirit. It is evident from Wayanad District that many disgruntled people belonging to forest dependent community joins extremist organization finding no solution to their needs. The averments that the Department has taken conscious stand to open to the public, places of natural beauty within the forests in a regulated way so that the visitors go back with a better appreciation of the need for conserving forests at the same time the members of the local community derive gainful employment at their doorstep which will further motivate them to properly protect the forests is unfounded and hence denied. Neither the habitat is protected nor the local community is benefited out of the eco tourism. The local community has no choice but oblige the FRO for their livelihood. In case no eco tourism activity is carried out, the forest dependent community will survive doing some other work. Wages for the work done is the right of the person concerned and cannot be termed as a benevolent part of the eco-tourism or charity done by the Forest Department. To my knowledge, the State Education Department has not made nature education as part of school/college curriculum and visitation to reserved forest cannot be termed as imparting nature education to visitors. Most of the visitors make visit to the eco tourism destination as a recreation and not as a nature education. Eco tourism damages the biological diversity and the averment that the eco tourism model benefit all is baseless, opposed to facts and hence denied. The averment to the effect that the eco tourism is the only viable option to gainfully employ forest dependant local population in to the conservation of forests that is workable in Kerala is whimsical, opposed to facts and hence denied. Eco tourism as a workable model for conservation is liable to be rejected as the

nature can safe guard flora and fauna left without human interference.

- (15) It is submitted that the averments in paragraphs 13 and 14 of the counter affidavit of the 1st respondent are not fully correct and hence denied. The eco tourism conducted by the Forest Department and DTPC is causing damage to the ecology. The 1st respondent has not explained as to how the DTPC is allowed eco tourism in forest areas and how the income from eco tourism is distributed among the forest dependent communities. It is admitted that the amount collected as service charge from visitors goes to the Ecosystem Management Fund and not to the forest dependent community. To my knowledge no amount, except the wages paid to the persons engaged in eco tourism, is distributed or paid to the welfare of the forest dependent communities. Earning wages by the forest dependent community cannot be an attribute of eco tourism as they can get wages from other avocation. The averment that the number of visitors permitted is based on adhoc carrying capacity study is liable to be rejected. Eco tourism is a non forestry activity and cannot be carried on without the approval of the working plan/Management Plan. The averment that the day visitation to the forest areas is done under PFM model is untenable and hence denied.
- (16) It is submitted that the averments in paragraphs 15 to 19 of the counter affidavit of the 1st respondent is not fully correct and hence denied. The averment that the day time visitation to Kuruva Island is not a non-forestry activity restricted by the Forest (Conservation) Act is baseless, opposed to facts and hence denied stoutly. The 1st respondent has not explained about the protected areas where eco tourism activity is carried on and when the guideline will be published. It is submitted that the admission that calculation of carrying capacity is a skill which the forest officers should acquire shows that the officers hitherto

made carrying capacity on guess work and not on the basis of proper analysis of relevant factors.

- (17) The grounds raised in the writ petition are valid and sustainable to grant the relief sought for and the contrary contentions are liable to be rejected. It is submitted that the contentions raised in the counter affidavit of the 1st respondent are devoid of any force or merit and is liable to be rejected.
- (18) In the above facts and circumstances, it is humbly prayed that this Hon'ble Court may be pleased to accept this reply affidavit on record and also direct the 1st respondent to answer the interrogatory submitted along with this reply affidavit, in the interest of justice.

All the facts stated above are true and correct to the best of my knowledge belief and information.

Dated this the 19th day of May, 2019

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me, on this the 19th day of May, 2019, in my office, at Ernakulam.

Prakash.M.P; Advocate

Presented on:- 20.05.2019

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

I.A No. of 2019

in

W.P. (c) No. 35064 of 2018

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

State of Kerala and others : Respondents

REPLY AFFIDAVIT OF THE PETITIONER
WITH I.A FOR DIRECTION

PRAKASH.M.P (P 165)

Counsel for the Petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

W.P. (c) No.35064 of 2018

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

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I N D E X

Sl.No.	<i>Description</i>	Pages
1	Reply affidavit of the petitioner to the counter affidavit filed on behalf of the 1 st respondent	
2	<u>Exhibit-P-14</u> :- True copy of the relevant pages of the Handbook of F(C) Act and Rules published by the 6 th respondent	
3	I.A seeking direction	

Dated this the 20th day of May, 2019

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

I.A No. of 2019

In

W.P.(c) No. 35064 of 2018**Petitioner/Petitioner**

Wayanad Prakrithi Samrakshana Samithi,
Represented its President N.Badusha, S/o. Khansa,
Nayketti, P.O., Sulthan Bathery P.O.,
Wayanad, Kerala 673 592.

Vs.

Respondents/Respondents

1. State of Kerala represented by the
Chief Secretary to the Government,
Secretariat, Thiruvananthapuram 695 001.
2. Additional Chief Secretary to the Government,
Forest and Wildlife Department, Secretariat,
Thiruvananthapuram 695 001.
3. Principal Chief Conservator of Forest and Head of Forest Forces,
Forest Head Quarters, Vazhuthacaud,
Thiruvananthapuram. 695 014.
4. Divisional Forest Officer,
South Wayanad Forest Division,
Kalpetta, Wayanad 673121.
5. District Collector and the Chairman of District Tourism
Promotion Council, Wayanad.
6. Union of India represented by its Secretary,
Ministry of Environment, Forest and Climate Change,
Prayvaran Bhavan, Lodhi Road, New Delhi 110 003.

**PETITION FILED UNDER RULE 150 OF THE RULES OF THE HIGH
COURT OF KERALA, 1971**

For the reasons stated in the accompanying reply affidavit, it is
humbly prayed that this Hon'ble Court may be pleased to direct the 1st

respondent to answer the following interrogatories, in public interest, during the pendency of the above writ petition:

1. Name of the eco tourism sites mentioned in Ext. P2 which falls within protected areas?
2. Whether the respective management plan/working plan of the Forest Division containing eco tourism as a component has been approved by the Government of India under Section 2 of the Forest (Conservation) Act, 1980?
3. Whether carrying capacity study has been done over the 60 eco tourism sites mentioned in Exhibit P2 and whether any restriction has been imposed about the number of visitors in each eco tourism sites?
4. Whether any steps has been taken to include nature education as part of the School/College curriculum?
5. The amounts spend from the Ecosystem Management Fund of respective Forest Divisions for the welfare of local forest dependent communities, other than the wages paid?
6. The details of amounts set apart for the welfare of the Schedule Tribe community in the annual financial budget for the past decade and whether any such amount is being disbursed through the Forest Department?

Dated this the 20th day of May, 2019

Counsel for the petitioner

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM**W.P. (c) No. 35064 of 2018**

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

State of Kerala and others : Respondents

**Reply Affidavit of the Petitioner to the Counter Statement Filed
on Behalf of the 4th Respondent**

I, N.Badusha, S/o. late Khansa aged 68 years presently residing at Chithralakkara House, Naikatty, P.O., Sulthans Bathery, Wayanad 673 592 having come down to Ernakulam do hereby solemnly affirm and state as follows:-

- (1) I am the President of the Wayanad Prakrithi Samrakshana Samithi, the petitioner in the above writ petition. I am conversant with the facts of the case.
- (2) It is submitted that the above writ petition has been filed inter alia seeking to quash Ext. P10 and P11. It is submitted that on behalf of the 4th respondent, a statement is filed and a copy has been served on my counsel. I have read and understood the averments made in the above statement of the 4th respondent. All the averments made in the statement filed on behalf of the 4th respondent, in so far as they are contrary to or inconsistent with the facts stated hereunder are incorrect, untrue and hence denied.
- (3) It is submitted that the signatory to the statement filed is not competent to file the above mentioned statement and hence the statement on behalf of the 4th respondent is liable to be rejected. The author of Ext. P10 is the Additional Principal Chief Conservator of Forest (E&TW) and Ext. P11 is issued by the Principal Secretary

to the Government. Hence, the Range Forest Officer is not competent to justify Ext. P10 and P11.

- (4) It is submitted that the 4th respondent through the Range Forest Officer has stated incorrect facts and is liable to be proceeded. The contention in paragraph 2 to the effect that eco-tourism activity is not a non forest activity is opposed to facts, incorrect and hence, emphatically denied. The 4th respondent is attempting to mislead this Hon'ble Court by making incorrect statement. In Ext. P7, the Government of India declined to grant prior clearance for the eco tourism activity in South Wayanad Forest Division. Further, in Ext. P4 Guidelines for Eco Tourism in forest areas, prepared by the State Forest Development Agency, it is clearly stated at 5 that 'any eco tourism activity in reserved forest require clearance under Forest (Conservation) Act'. The averment that eco tourism is a part of conservation activities and is mainly meant for improving the livelihood of local people by generating employment is untenable, opposed to facts and hence denied. The 4th respondent is willfully misleading this Hon'ble Court and action may kindly be taken.
- (5) With reference to the averments in paragraph 2 of the statement filed on behalf of the 4th respondent, it is submitted that they are not fully correct and hence denied. The averment to the effect that the eco tourism is not a non forestry activity is incorrect and hence denied stoutly. The averment that the eco tourism is a part of conservation activities and is mainly meant for improving the livelihood of the local people by generating employment is untenable, opposed to facts and hence denied stoutly. In paragraph 3, the deponent has stated that the area is overcrowded. In other words, eco tourism has admittedly damaging the forest area by overcrowding.
- (6) With reference to the averments in paragraph 3 of the statement filed on behalf of the 4th respondent, it is submitted that they are not fully correct and hence denied. It is submitted that Ext. R4 (a)

produced along with the statement does not authorise eco tourism in forest area under Joint Forest Management (JFM for short) and the averments to the contrary are emphatically denied. Ext. R4 (a) require areas to be demarcated for JFM activities and to prepare micro-plan for JFM areas. The micro-plan cannot also go against the Working Plan approved by the Union of India. Hence, the deponent is misleading this Hon'ble Court by suggesting that eco tourism activity is being conducted under Ext. R4 (a). It is submitted that the averment that eco-tourism point is being managed and supervised through Vanasamrakshana Samithi under South Wayanad Forest Development Agency as per G.O (Rt) No. 429/2001/Forest by the Forest and Wildlife Department and as per the accepted formula is untenable, opposed to facts and hence denied. Ext. R4 (b) does not authorise ecotourism in Forest areas, rather it states of adverse impacts of eco tourism in forest area. Ext. R4 (b) is illegal in as much as it violates the provisions of the Forest (Conservation) Act, 1980. The State Government cannot validate unauthorised non-forestry activity of eco tourism by authorizing collection of fee from visitors. The averment that the Vanasamrakshana Samithies (hereinafter referred to as 'the VSS' for short) were established for the effective management of these eco tourism points involving local people and are run by benefit sharing is not correct and hence denied. It is submitted that VSS was formed as per G.O (Ms) No. 84/1997/F&WLD dated 13.10.1997. A true copy of the above G.O is produced herewith and marked as **Exhibit P12**. It is submitted that the Guidelines issued along with Ext. P12 were revised as per G.O (Ms) No. 8/98/F&WLD dated 16.01.1998. A true copy of the above G.O together with the revised Guidelines is produced herewith and marked as **Exhibit P13**. As per the above Guidelines, the strategies of the VSS are enumerated under Clause 3 which include, management of fires to reduce forest degradation, Introduction of sustainable Non Timber Forest produce (NTFP for short) harvesting practices to reverse the declining trend of growth of valuable NTFPs, stopping further encroachment into

forest areas, curbing illicit timber harvesting, which lead to forest degradation and loss of revenue and reversing localized environmental degradation. It is submitted that the above Guidelines were revised subsequently. In the circumstances, the contention that the VSS were established for the effective management of these eco-tourism points involving local people is baseless, opposed to facts and the deponent is attempting to mislead this Hon'ble Court.

- (7) With reference to the averments in paragraph 4 of the statement filed on behalf of the 4th respondent, it is submitted that they are not fully correct and hence denied. It is submitted that the averment that the eco-tourism is restricted to approximately 0.539 Ha area is not correct and hence denied. The eco-tourism activity adversely affect the entire forest area. It is also not explained as to how the Forest Department permitted the DTPC to start an entry point at the river bank of Kabani. The permission granted is illegal, unauthorised and the eco-tourism activity is liable to be interdicted.
- (8) With reference to the averments in paragraphs 5 and 6, of the statement filed on behalf of the 4th respondent, it is submitted that they are not fully correct and hence denied. The deponent is incompetent to justify Ext. P10 and P11, which are illegal, unauthorised.
- (9) It is submitted that the deponent has stated in paragraph 7 that the ecotourism is adversely affecting the fragile eco system and a carrying capacity study has begun. In other words, it is admitted that no proper carrying capacity study has been conducted hitherto. The deponent is incompetent to modify Ext. P10 and P11 and the undertaking by the deponent that based on the study now undertaken, the inflow of tourist will be regulated is whimsical, untenable and liable to be rejected.

(10) With reference to the averments in paragraph 8 of the statement filed on behalf of the 4th respondent, it is submitted that they are not fully correct and hence denied. The averment that no non-forestry activities has been carried out in the ecotourism point of Pakkom Kuruva as specified under Section 2 (ii) of the Forest (Conservation) Act 1980 is not correct and hence denied stoutly. The averments made in this paragraph shows the ignorance of the deponent regarding Section 2 of the Forest (conservation) Act, 1980 and the restriction imposed on non forestry activity. As pointed out in the memorandum of writ petition, eco tourism activity in South Wayanad Division is being conducted in violation of Ext. P7 approval and the respondents 1 to 5 are jointly liable to be proceeded for violation of Section 2 of the Forest (Conservation) Act, 1980. I am filing a petition seeking a direction to the 6th respondent to prosecute the respondent 1 to 5 for carrying on eco tourism activity in South Wayanad Division in violation of Ext. P7 approval, which may kindly be allowed.

All the facts stated above are true and correct to the best of my knowledge belief and information.

Dated this the 26th day of January, 2019

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me, on this the 26th day of January, 2019, in my office, at Ernakulam.

Prakash.M.P; Advocate

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

W.P. © No.35064 of 2018

Wayanad Prakrithi Samrakshana Samithi : Petitioner

Vs.

State of Kerala and others : Respondents

I N D E X

Sl.No	<i>Description</i>	Pages
1	Reply affidavit of the petitioner to the statement filed by the 4 th respondent	
2	Exhibit-P-12:- True copy of the G.O (Ms) No. 84/1997/F&WLD dated 13.10.1997	
3	Exhibit-P-13:- True copy of the G.O (Ms) No. 8/98/F&WLD dated 16.01.1998 with revised Guidelines	
4	I.A seeking direction	

Dated this the 28th day of January, 2019

Counsel for the petitioner

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

I.A No. of 2019

In

W.P.(c) No. 35064 of 2018**Petitioner/Petitioner**

Wayanad Prakrithi Samrakshana Samithi,
Represented its President N.Badusha, S/o. Khansa,
Nayketti, P.O., Sulthan Bathery P.O.,
Wayanad, Kerala 673 592.

Vs.

Respondents/Respondents

1. State of Kerala represented by the
Chief Secretary to the Government,
Secretariat, Thiruvananthapuram 695 001.
2. Additional Chief Secretary to the Government,
Forest and Wildlife Department, Secretariat,
Thiruvananthapuram 695 001.
3. Principal Chief Conservator of Forest and Head of Forest Forces,
Forest Head Quarters, Vazhuthacaud,
Thiruvananthapuram. 695 014.
4. Divisional Forest Officer,
South Wayanad Forest Division,
Kalpetta, Wayanad 673121.
5. District Collector and the Chairman of District Tourism
Promotion Council, Wayanad.
6. Union of India represented by its Secretary,
Ministry of Environment, Forest and Climate Change,
Prayvaran Bhavan, Lodhi Road, New Delhi 110 003.

**PETITION FILED UNDER RULE 150 OF THE RULES OF THE HIGH
COURT OF KERALA, 1971**

For the reasons stated in the accompanying reply affidavit, it is humbly prayed that this Hon'ble Court may be pleased to direct the 6th respondent to take action under the Forest (Conservation) Act 1980 against respondents 1 to 5 for carrying on eco tourism activity in South Wayanad Division in violation of Ext. P7 approval, during the pendency of this writ petition.

Dated this the 28th day of January, 2019

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P.(C) No.35064/2018

Wayanad Prakrithi Samrakshana Samithi, : Petitioner
represented by its President

Vs.

State of Kerala and others : Respondents

STATEMENT FILED ON BEHALF OF THE 5th RESPONDENT

This statement is being filed without prejudice to the right of the 5th respondent filed a detailed counter affidavit, if found necessary, at a later stage.

2. The writ petition is filed inter-alia for the issuance of a writ of certiorari quashing Exhibit P10 and Exhibit P11 proceedings issued increasing the daily number of visitors to Kuruva Island situated within Chedleth Forest Range of South Wayanad Forest Division and also for a direction restraining the State Government for carrying on eco tourism in reserve forest, without getting prior approval of the management/working plan under Section 2 of the Forest (Conservation) Act, of 1980 and engaging persons other than forest dependent community.

3. It is submitted that Kuruva Island is the important eco-tourism destination in Wayanad, which opened for just 200 days in a year and is the most sought after eco-tourism spot in Wayanad District. Forest Eco-tourism programme was started by the Forest Department during 2004 under the Participatory Forest Management Programme.

4. It is submitted that the Kuruva Island consists of 146.01 Ha of Reserve Forests out of which eco-tourism is restricted to approximately 0.539 Ha area. The Pakkom - Kuruva Vanasamrakshna Samithi (VSS) under the South Wayanad Forest Development Agency is conducting the eco-tourism programme in the area. At present there are two entry points to the Kuruva Island. One is at Palvelicham managed by District Tourism Promotion Council (DTPC), Wayanad functioning under the 5th respondent and the other at Pakkom managed by the Pakkom-Kuruva

Vanasamrakshana Samithi, consisting of the local people, mainly tribals. The Eco-Tourism Centre was opened mainly for improving the livelihood of the local tribes by generating employment. During 2004, the Forest Department permitted the DTPC to start an entry point at the river bank of Kabani, adjoining to Kuruva Island. Later on the DTPC has managed to acquire river bank on the periphery of Kuruva Island and Palvelicham from the Panchayath authorities and established ticket counter, Amenity Centre and lodging facility. They have engaged tourism guides and started facilities for rafting in Kabani River for the tourist into Kuruva Island. Subsequently, this area on the Palvelicham side has developed into a tourism centre with the establishment of new hotels, restaurants etc. on the various farm lands.

5. It is submitted that, before the tourism activities were started by the DTPC at the Kuruva Island, the place held a lot of criminal records relating to illegal sand mining, illegal cutting of trees and other Anti Social activities. It is only after the starting of the tourism activities with the participation of District Tourism Promotion Council, the area has changed a lot with no criminal case reported as previously. The District Tourism Promotion Council work hand in hand with the Forest Department thus preserving the Kuruva Island through control entry of tourist for study purpose, entry only through a specified walkway inside the Island without disturbing the nature and not allowing plastic materials inside the Island which has reduced pollution caused by plastic materials. It is pertinent to note that no mechanised boats are used for transportation and the same is done by Bamboo rafts.

6. Out of the 146.01 Ha of reserve forest, only an approximate extent of 0.539 Ha of area is used for tourism purposes including walkway and bathing area. The Kuruva Eco Tourism activity has given a boost to the local economy mainly at the Palvelicham side and around six resorts, five home stays, fifty one restaurants, seven coffee shops and thirteen handicrafts/souvenir shops have come up in the area and these are located in the main land away from the Kuruva Island. It is also brought to the notice of this Hon'ble Court that more than hundred families in the locality are dependent solely on the tourism activity at Kuruva for their livelihood. In addition to this, the tourism activity in Kuruva Island also enables a lot

of taxi and autorikshaw operators who are inhabitants of the locality to earn their livelihood.

7. Since, the District of Wayanad witnessed continuous rains during the last monsoon season resulting in loss of agriculture coupled with other losses, the people of Wayanad are looking at tourism as their hope of survival, being the second largest economy for the District. The Eco Tourism activity in Kuruva Island is being carried out strictly adhering to the provisions of law and also without causing any damage to the ecology and also providing source of livelihood for the local inhabitants especially the tribal people of the locality. This statement is to bring to the notice of this Hon'ble Court the true state of affairs pertaining to the eco tourism activity at Kuruva Island.

Dated this the 8th day of November, 2018.

B. ANAND
SECRETARY
DISTRICT TOURISM PROMOTION COUNCIL
WAYANAD

M.R.SABU
SENIOR GOVERNMENT PLEADER

P/1/8.11

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE MR. HRISHIKESH ROY

&

THE HONOURABLE MR. JUSTICE A.K. JAYASANKARAN NAMBIAR

Friday, the 22nd day of March 2019/1st Chaithra, 1941

WP(C) No. 35064/2018

PETITIONER

WAYANAD PRAKRITHI SAMRAKSHANA SAMITHI,
REPRESENTED BY ITS PRESIDENT N. BADUSHA, S/O. KHANSA, NAYKETTI P.O.,
SULTHAN BATHERY P.O., WAYANAD, KERALA- 673 592.

RESPONDENTS

1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM- 695001.
2. ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT,
FOREST AND WILDLIFE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM- 695 001.
3. PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF FOREST FORCES,
FOREST HEAD QUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM- 695 014.
4. DIVISIONAL FOREST OFFICER,
SOUTH WAYANAD FOREST DIVISION, KALPETTA, WAYANAD- 673 121.
5. DISTRICT COLLECTOR AND THE CHAIRMAN OF DISTRICT TOURISM,
PROMOTION COUNCIL, WAYANAD-673 122.
6. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF ENVIRONMENT,
FOREST AND CLIMATE CHANGE, PRAYVARAN BHAVAN, LODHI ROAD, NEW DELHI-
110003.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an interim order staying the operation and implementation of Ext.P10 and P11 and also to prohibit Ecotourism under the South Wayanad Forest Division, for want of prior approval under the Forest (Conservation) Act, 1980, during the pendency of the above writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 19/03/2019 and upon hearing the arguments of SRI.M.P.PRAKASH, Advocate for the petitioner, SRI.RANJITH THAMPAN (ADDITIONAL ADVOCATE GENERAL) & GOVERNMENT PLEADER for R1 to R5 and of SMT.C.G.PREETHA, CENTRAL GOVERNMENT COUNSEL for R6, the court passed the following:-

P.T.O.

Hrishikesh Roy, C.J.

&

A.K.Jayasankaran Nambiar, J.

W.P.(C)No.35064 of 2018-S

Dated this the 22nd day of March, 2019

ORDER

A.K.Jayasankaran Nambiar, J.

Pursuant to our last order dated 19.3.2019, a counter affidavit has been filed on behalf of the 1st respondent, wherein, at paragraph 11, it is clearly stated that in the working plan for South Wayanad Forest Division for the period 2012-2021, an approval has been granted by the Government of India, in the Ministry of Environment and Forests, to the entire working plan except Chapter IV on Ecotourism. It is apparent therefore that there is no approval to Chapter IV of the working plan, which deals with Ecotourism and hence, it is to be presumed that Ecotourism in the South Wayanad Forest Division for the period 2012-2021, is not an activity that has been granted approval by the Central Government. It is also relevant to note, as rightly pointed out by the learned counsel for the petitioner Sri. M.P.Prakash, that tourism had been declared to be a non-forest activity for the purpose of Forest Conservation Act by the judgments of this court. Under the said circumstances, we are of the view that pending disposal of this Writ Petition, there should be an interim order staying the operation and implementation of Exts.P10 and P11, as also a direction that no Ecotourism activity shall be undertaken in

V.P.(C) No.35064/2018

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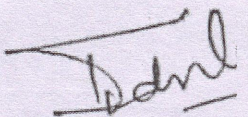
the reserve forest of the South Wayanad Forest Division, and we order accordingly.

Post after four weeks for the affidavits of the respondents as also the re affidavit, if any, on behalf of the petitioner.

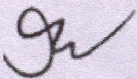
Sd/-
HIRSHIKESH R
CHIEF JUSTI

Sd/-
A.K JAYASANKARAN
JUDGE

-TRUE COPY-


ASSISTANT REC

vpv





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P.T.O.

KURUVA RESERVED FOREST

Notification under section 17 A (1) was published with Development Department Notification No. 417, dated 20th May 1938 published at page 780 of Part I of Fort St. George Gazette, dated 31st May 1938. (R. D-s. 2172/38).

NOTIFICATION

Fort St. George, September 21, 1938.

No. 802.-In exercise of the powers conferred by. SuB section (4) of section 17-A of the Madras Forest Act, 1882 (Madras Act V of 1882), the Government of Madras are hereby pleased to re-define the limits of Kuruva Reserved Forest in Wyanad taluk, Malabar District, so as to remove the defects in the description of the limits of the said forest In Revenue Department Notification No. 343. dated the 22nd June 1895, published at page 710 of Part 1 of the Fort St. George Gazette, dated the 25th June 1893, by making the following correction to the limits of the said forest:

Correction

For the schedule to the said notification, the schedule shall be substituted, namely:

Schedule

Malabar District, Wyanad Taluk, PulpaHi AmSom, Pakkam Desom. (Name of Forest-Kuruva, Area in acres-360.80.)

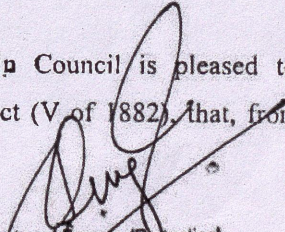
Description of boundaries

This is an island in Kabiniriver and consists of survey No. 366 of Pakkam desom. It is bounded on all sides by the river (Survey No. 128 of Pallam desom).

Remarks: Admitted rights- Nil.

Ootacamund, June 22, 1895.

No. 343.-His Excellency the Governor in Council is pleased to declare under the provisions of section 16 of the Madras Forest Act (V of 1882), that, from the 1st September,


Addl. Principal Chief Conservator of Forests (Protection)
Forest Headquarters, Thiruvananthapuram

1895, the area, the boundaries of which are set forth in the schedule appended to this notification, will be constituted a 'Reserved Forest'.

Schedule

District	Taluk	Amsom	Desom	Number of block	Name of block	Boundaries
1	2	3	4	5	6	7
Malabar	Wayanad	Puthadi	Pakkam	23	Kuruva	This is an island formed in the Kabini river lying adjacent to the Padiri proposed reserve.

Remarks: . Admitted rights-Nil.

Date from which reservation was given effect to - 1st September 1895. No. and date of Government notification. -343, dated 22nd June 1895.

Page No. and date of Fort St. George Gazette.-710, dated 25th June 1895.

B.P. No. 432, dated 13th July 1895.

G.O. No. 384, dated 22nd June 1895.

Area as per section 16 notification.-367.00 acres.

No. and date of G.O. sanctioning notification under section 17 A (4) Notification.-G.O. Ms. 2649/Dev.

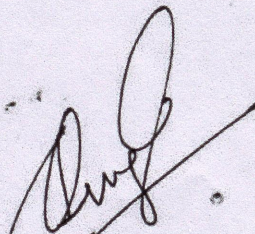
Dept., dated 25th October 193d.

No. and date of section 17 A (4) Notificaton.-802, dated 27th September 1938. Page No. of Fort St. George Gazette.-1441, dated. 11th October 1938.

Area as per section 17 A (4) Notification.- 360.80 acres.

(Sd.)
D.F.O Wayand

(Sd.)
Divisional Forest Officer
Kozhikode.


Addl. Principal Chief Conservator of Forests (Protection)
Forest Headquarters, Thiruvananthapuram

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

I.A No. of 2019

in

W.P. (c) No. 35064 of 2018

Manu Abraham and others : Petitioners

Vs.

Wayanad Prakrithi Samrakshana : Respondents/
Samithi and others : Petitioner/Respondents

**Counter Affidavit of the Petitioner to the I.A Seeking
Impleading**

I, N.Badusha, S/o. late Khansa aged 68 years presently residing at Chithralakkara House, Naikatty, P.O., Sulthans Bathery, Wayanad 673 592 having come down to Ernakulam do hereby solemnly affirm and state as follows:-

- (1) I am the President of the Wayanad Prakrithi Samrakshana Samithi, the petitioner in the above writ petition. I am conversant with the facts of the case.
- (2) It is submitted that the above I.A has been filed seeking to implead petitioners in the I.A as additional respondents in the above writ petition. All the averments made in the affidavit filed in support of the above I.A, in so far as they are contrary to or inconsistent with the facts stated hereunder are incorrect, untrue and hence denied.
- (3) It is submitted that the above I.A is not maintainable either in law or on facts. The above writ petition is filed in public interest to protect the forest and ecology. The petitioners in the I.A are not stated to belong to forest dependent Scheduled Caste or Scheduled Tribe communities, hence, the petitioners have no legal right to

oppose the relief sought in the larger public interest. Therefore, the petitioners are not entitled to seek impleadment in the public interest litigation.

- (4) With reference to the averment made in paragraph 3 of the affidavit filed in support of the above I.A, it is submitted that they are not fully correct and hence denied. The petitioners have not disclosed how they were 'employed' as guides in the Soochipara Ecotourism center. According to the petitioners, the Vana Samrakshana Samithi is a body created by the Government of Kerala for protection and promotion of people from the Scheduled Caste and Scheduled Tribe communities. It is understood from the names of the petitioners that many of them do not belong to Scheduled Caste or Scheduled Tribe communities. Therefore, the petitioners in the I.A as well as the 4th respondent Divisional Forest Officer is bound to explain before this Hon'ble Court as to how the petitioners, who does not belong to either Scheduled Caste or Scheduled Tribe communities have obtained employment meant for Scheduled Caste and Scheduled Tribe communities as guides under the Kerala Forest Department. The averment that the ecotourism activity in Soochipara started in 2009 is baseless and hence denied. Ecotourism activity is being carried out without prior approval under Section 2 of the Forest (Conservation) Act, 1980 (the Act 1980 for brevity) and the averments to the contrary are emphatically denied. The averment that the ecotourism activities in Soochipara have been conducted with all necessary approvals and there has not been any non-forest activity conducted which may cause disturbance or misuse of the fragile ecosystem is not fully correct and hence denied stoutly. The averment that the above writ petition has been filed without disclosing the relevant facts and is done with the malicious intention to destroy the ecotourism activities in this region so as to prejudice the livelihood of hundreds of people, including the petitioners in the I.A is unfounded, opposed to facts and hence emphatically denied. The averments made in the writ

petition are true and the contrary averments are stoutly denied. The above writ petition is filed to protect larger public interest and the averments to the contrary are emphatically denied.

- (5) With reference to the averment made in paragraph 4 of the affidavit filed in support of the above I.A, it is submitted that they are not fully correct and hence denied. Since, the ecotourism activity carried on is against the provisions of the Act, 1980, the petitioners cannot claim that they solely depend on the ecotourism activity for their livelihood. The attempt of the petitioners is to project their private interest in order to subvert the judicial proceedings in the above public interest litigation. The petitioners are not entitled to come on record as additional respondents in the above writ petition and hence the above I.A is liable to be dismissed with cost.

All the facts stated above are true and correct to the best of my knowledge belief and information.

Dated this the 19th day of May, 2019

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me, on this the 19th day of May, 2019, in my office, at Ernakulam.

Prakash.M.P; Advocate

Presented on:- 20.05.2019

BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM

I.A No. of 2019

in

W.P. © No. 35064 of 2018

Manu Abraham and others : Petitioners

Vs.

Wayanad Prakrithi Samrakshana : Respondents/
Samithi and others : Petitioner/Respondents

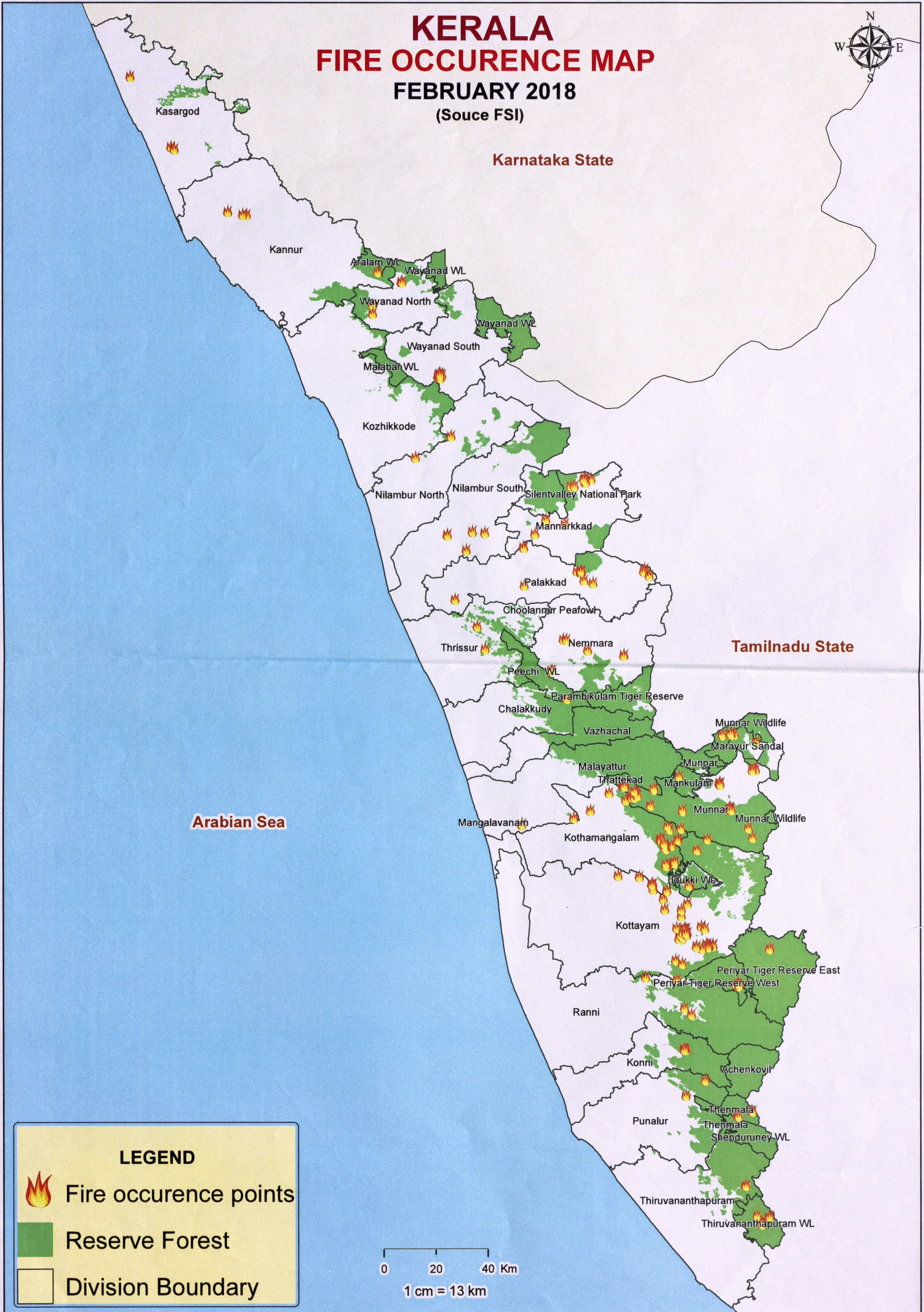
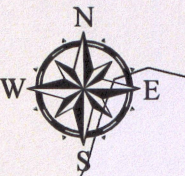
COUNTER AFFIDAVIT OF THE WRIT PETITIONER
TO THE I.A SEEKING IMPLEADMENT

PRAKASH.M.P (P 165)

Counsel for the Writ Petitioner

KERALA FIRE OCCURENCE MAP FEBRUARY 2018

(Souce FSI)



LEGEND

- Fire occurence points
- Reserve Forest
- Division Boundary

0 20 40 Km
1 cm = 13 km

KERALA

FIRE OCCURENCE MAP

JANUARY & FEBRUARY 2018

(Souce FSI)

Karnataka State



0 20 40 Km

1 cm = 13 km

Arabian Sea

Tamilnadu State

Legend



Fire occurence Jan 2018



Fire occurence Feb 2018

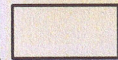
Road



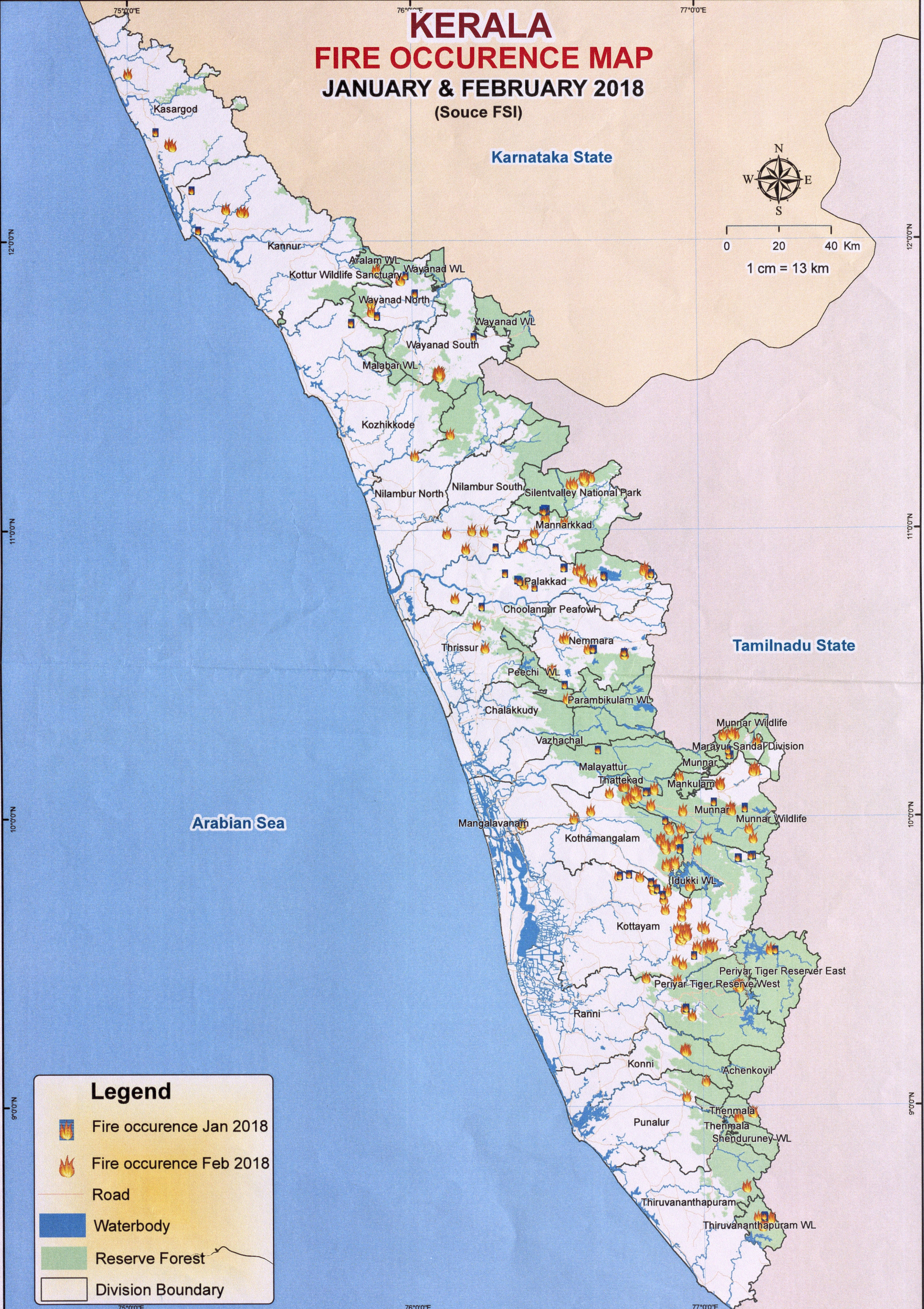
Waterbody



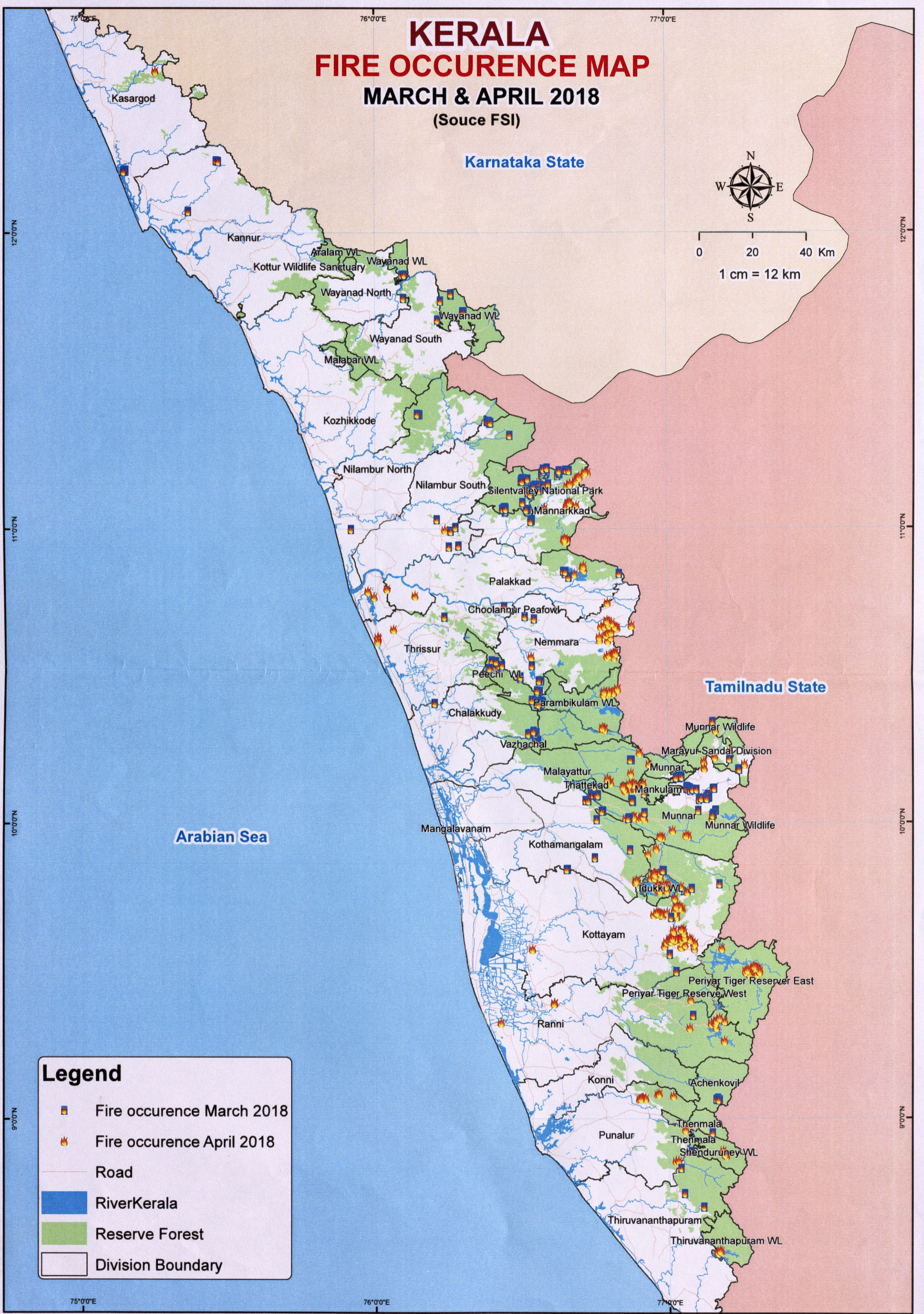
Reserve Forest



Division Boundary

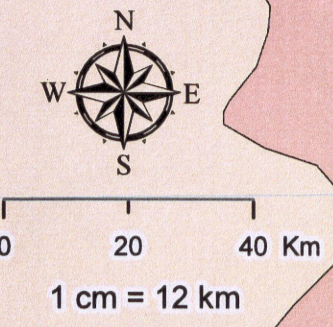


KERALA FIRE OCCURENCE MAP MARCH & APRIL 2018 (Souce FSI)



Legend

- Fire occurence March 2018
- Fire occurence April 2018
- Road
- RiverKerala
- Reserve Forest
- Division Boundary



Geographic coordinates are marked along the map's border: 75°00'E, 76°00'E, 77°00'E, 78°00'E; 9°00'N, 10°00'N, 11°00'N, 12°00'N.