

BEFORE THE HONOURABLE GREEN TRIBUNAL

- I. Applicant : Wayanad Prakriti Samrakshana Samithi,
No. ,, Wayanad, Kerala.
A registered society for protection of ecology
and forests.
- II. RESPONDENTS: Union of India represented by its Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, New Delhi.
- State of Kerala represented by its Chief
Secretary, Secretariat, Thiruvananthapuram.
- Addl. Chief Secretary to the Government,
Revenue Department, Secretariat,
Thiruvananthapuram
- Addl. Chief Secretary to the Government,
Forest and Wildlife Department, Secretariat,
Thiruvananthapuram.
- Principal Chief Conservator of Forests and
Head of Forest Forces, Forest Head
Quarters, Thiruvananthapuram.
- Additional Principal Chief Conservator of

STATEMENT OF Facts

I. APPLICANT

The applicant, the Wayanad Prakrithi Samrakshana Samithi (Society for Conservation), Wayanad is a registered voluntary organization working in the field of environmental conservation. It came into being in the nineteen-seventies as a peoples' reaction to large scale elephant poaching and sandalwood smuggling in Wayanad and adjacent Karnataka and Tamil Nadu forests. Later, it succeeded in preventing clear felling of forests in the catchment area of Kabani, a tributary of Cauvery River by Chipko-model agitation. Other landmark achievements in the history of the Society are (i) prevention of planting exotic tree species in the high altitude grasslands of Brahmagiri, Banasura and Chelembra peaks, (ii) stoppage of illegal quarrying and mining of sand in many places in Wayanad, (iii) saving unique island forest of Kuruva in Kabani river from ill-advised social forestry scheme, (iv) protection of pre-historic monument of Edakkal caves from wanton destruction by tourists. Even though the State Archeology Department notified Edakkal Cave as a protected monument, it did nothing for its safety. It was the Society which erected an iron gate at the entrance of the cave and kept it under lock and key for years. When the Government appointed a Custodian, the Society handed over the keys, (v) protection of forest fires. For the first time in Kerala, the Society started a campaign to prevent forest fire, forcing Government to take action in this regard (vi) Night traffic ban in National

are against the provisions of Forest (Conservation) Act, 1980 and would have adverse impact on the ecology of the area, and will destroy the forest surrounding the hills and the streams originating from them.

III. Wayanad in General:

1. WAYANAD (also spelled as Wynad) is one of the hill districts of Kerala. Kalpetta, the headquarters of the district is 76 Kms east of the nearest coastal city of Kozhikode.
2. The green paradise called Wayanad is nestled among the mountains of Western Ghats. Its elevation from sea level is between 700 and 1400 meters. Brahmagiri, Banasuran and Chembra are the tallest peaks of Wayanad Western Ghats. These peaks, connected by a chain of lesser hills form the western boundary of Wayanad. The western slopes of the mountains are steep, whereas, towards the east the terrain is gently descending. However, up to the Karnataka-Tamil Nadu border, the landscape is undulating, with hillocks and valleys.
3. It is submitted that the taller peaks in western end of Wayanad houses the unique shoal-grasslands ecosystem. The valleys are covered by ecologically rich tropical wet evergreen forest. The eastern border is clothed by tropical deciduous forest rich in large mammals like elephant, gaur, sambar, tiger and leopard. Two blocks of forests in eastern boundary of Wayanad constitute Wayanad Wildlife Sanctuary. It is contiguous with Nagarhole National Park and the Bandhipur Tiger Reserve in Karnataka and the Mudumalai tiger Reserve in Tamil Nadu. Together they form the habitat harbouring the largest number of Asian Elephants

Karnataka and Tamil Nadu seriously. Also, numerous west flowing rivers of Kerala like Valapattanam, Mayyazhi, Kuttiadi, Ancharakandi and Chaliyar also originates from the western water sheds of Wayanad hills. Thus, Wayanad is an important water reservoir of south India.

6. It is submitted that Pookot is a mountain area in the crest-line of the Western Ghats. The place where the University plans to build helipad, swimming pool, etc. is hardly one kilometer away from Lakkidi where the highest rainfall (up to 6000 mm) was recorded in Kerala till recently.
7. It is submitted that Pookot is flanked on the north by Banasuran, on the south by Chembra, two of the highest peaks in Wayanad. Pookot and other area between these two peaks harbouring several endemic species of flora and fauna, are very rich in biodiversity. For example, Chembra just south of Pookot, is the only place from where the recently re-discovered orchid *Ipsa Malabarica* has been reported outside Silent Valley National Park. This area is also the habitat of several endemic and endangered birds like Nilgiri Laughing Thrush. Several species of bush frogs like *Raorchestus nerestigona*, *Raorchetus ochalandra*, *Raorchestus chromosynchysi* were discovered from the area recently, and herpetologists believe that many remains undiscovered in the forests of Wayanad. Endemic mammals like the leopard cat and the lesser Malabar Flying Squirrel have been spotted in Lakkidi. It is considering the biological richness of Wayanad that it was included in the core of Nilgiri Biosphere Reserve.
8. It is submitted that the National Highway 212 from Kozhikode to Mysore passes through Pookot. The road and the settlements on

on the forest for their subsistence. Kurumas and Kurichias are mainly agriculturists and Ooralis (also known as Ooralikuruma) are artisans.

10. It is submitted that most of the members of the primitive Tribes of Paniya, Adiya, Kattunaikka and Oorali are landless poor. During the colonial rule, the forest dwelling tribals were pushed out of the forest for raising plantations by Europeans. After the independence, large waves of settlers from central Kerala uprooted them from their land. Even though, the Kerala Legislature enacted a bill to protect the rights of the Tribals over their land it was never implemented. Projects envisaged to provide livelihood to tribals failed due to corruption and mismanagement.

IV. ORIGIN OF 100 ACRES OF LAND IN THE POSSESSION OF KERALA VETINERIRY AND ANIMAL SCIENCES UNIVERSITY:

11. The Legislature of Kerala enacted the Kerala Private Forest (Vesting and Assignment) Act, 1971 (Act 26 of 1971) (hereinafter referred to as the Act for brevity) to vest the private forest in the State for the purpose of assignment to landless poor as well as for conservation of forest land. The High Court of Kerala struck down the provisions of the Act as unconstitutional on 21.06.1972. Later, on appeal to the Apex Court, the said enactment was held to be constitutionally valid by judgment dated 18.09.1973. During the interregnum, large areas were converted as plantations, so that they can be sought to be exempted from the provisions of the Act. For Example the areas held by Poddar Plantations in Wayanad district.

forestry operations that the dangers of utilization in these "reserved" tracts are strictly controlled. In other areas, like Wayanad and Attappady, special tracts have been set apart exclusively for them. **A sample scheme for a dairy community for scheduled tribes based on the grasslands at Pookote in South Wayanad is at Annexure IIIC.**" Annexure IIIC of the above Report provide for a draft proposal for establishing a dairy colonization farm in south Wayanad. Relevant portion of the Report and a copy of Annexure IIIC is produced as **Annexure I.**

13. It is submitted that the 100 acres of land in question is part of a 420.50 hectares of land in Re Survey No. 180, 181, 182, 183, 184, 186, 187 in Kunnathidavaka Village, which was notified as Vested Forest under section 3 of the Act 26 of 1971. A copy of the above notification dated 08.07.1977 is annexed herewith as **Annexure II.** In the above, 40 Ha (100 acres) of the land falls within VFC item 89 in Kunnathidavaka Village. Subsequent to Annex. II Notification, the forest land was surveyed and found to have 531.1675 Ha of land. Accordingly, another Notification correcting the extent was published. A true copy of the Erratum Notification is produced herewith and marked as **Annexure III.** As per Section 4 of the Act 26 of 1971, the status of the land vested under Section 3 is reserved forest. Thus the status of the 100 acres of land is reserved forest.

V. LAND TRANSFERRED TO REVENUE DEPARTMENT

14. It is submitted that as per Rule 9 of the Kerala Private Forest (Vesting and Assignment) Rules 1974, (hereinafter referred to as

G.O (Ms) No. 326/78/AD dated 14.12.1978. It is further submitted that in the G.O dated 14.12.1978, the extent of land assigned was modified as 9938.0814 Ha. In the above G.O also, the vested forest lands covered by Annexure II was included. A true copy of the G.O dated 14.12.1978 is produced herewith and marked as **Annexure V**.

15. It is submitted that as visualised in the Annexure III C to the Annexure I Vested Forest Committee Report, the Government considered the Project for the formulation of a Tribal Collective Farm in the Pookot lake area, comprised in Vested Forests of South Wayanad Taluk and accorded administrative sanction for the implementation of the Project, as per G.O (Ms)73/79/AD dated 17.02.1979. In the above G.O. the Government ordered to provide funds. It is also stipulated that the State Forest Department will continue to be in charge of Security and protection of the vested Forest land until the Society is in full possession of it. A true copy of the above G.O dated 17.02.1979 is produced herewith and marked as **Annexure VI**. From Annexure I to VI, it can be seen that the 420 Ha land area covered by Annexure I to VI are having the status of reserved forest. In the above G.O, the State Government entrusted the Project with the Director of Tribal Welfare Department as implementing authority. The Director of Tribal Welfare was directed to address Union of India for funds for implementing the Project. The applicant is unaware of the details of the grant made by the Union of India for the betterment of the Tribals.
16. It is submitted that the Parliament enacted the Forest (Conservation) Act, 1980 (hereinafter referred to as the FC Act for brevity) providing for conservation of forests. The FC Act

consideration of proposed assignment, approval of Government of India is required. Accordingly, the Secretary to Government directed the Chief Conservator of Forests to forward urgently, the proforma and sketch and other details, in accordance with the prescribed procedure for seeking sanction from the Government of India as per letter dated 22.09.1988, a true copy of which is produced herewith and marked as **Annexure VII**. In view of Ann. VII, the respondents cannot be heard to contend that no approval from Government of India is necessary for assignment of vested forest land or for any other non forestry activity over the land covered by Annexure III Notification.

18. It is submitted that on resurvey, the land allotted to the Pookot Girijan Collective Farming Co-operative Society Ltd was found as 531.1675 Ha. Due to various factors, including insufficient governmental support, the Society could not utilize the entire extent of land allotted and the District Collector as per his letter dated 09.05.1994 recommended to transfer 100 Ha of land to another Tribal Society, namely, the Mananthavady Tribal Plantation Co-operative Society Ltd. (Priyadarshini Tea Estate). The State Government as per G.O (Ms) No. 476/94/RD dated 12.09.1994 accorded sanction for transfer of 100 Ha of land in the possession of Pookot Girijan Collective Farming Co-operative Society Ltd. to Mananthavady Tribal Plantation Co-operative Society Ltd. A copy of the above G.O is annexed herewith as **Annexure VIII**.
19. It is submitted that the State Government as per G.O (Rt) No. 3643/98/RD dated 13.08.1998 ordered that 100 acres of land in in Sy. No. 181(Part), 180/1A, 2A of Kunnathidavaka Village in the possession of Pookot Girijan Collective Farming Co-operative

Kerala had submitted that sanction under the Forest (Conservation) Act, 1980 has not been formally obtained and that steps are being taken to obtain necessary approval. The Division Bench as per judgment dated 07.12.2001 in W.A.No. 3549/2001 directed the State of Kerala not to carry out any construction in the Forest land in and around Pookodu lake without the approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. A copy of the above judgment in W.A No. 3549/2001 is annexed herewith as **Annexure X**.

22. It is further pointed out that the High Powered Committee constituted by the GoK for Tribal Settlement and Development Mission in its meeting held on 29.11.2001 had decided to get the legal opinion of the Advocate General as to the necessity to get prior approval under Section 2 of the Forest (Conservation) Act for assignment of land in the possession of the Pookot Girijan Collective Farming Co-operative Society Ltd. to the members of Scheduled Tribe community. A true copy of the above Minutes of the High Powered Committee is produced herewith and marked as **Annexure XI**. Thereafter, the Advocate General gave an opinion that the lands are forest lands, that assignment can be done only with the prior approval of the Central Government and that non compliance of the provisions of the Act would expose the Government officials to punishment under Section 3B of the FC Act. A copy of the above opinion of the Advocate General is annexed as **Annexure XII**.
23. It is submitted that the Government of Kerala as per letter No. 1053/C1/2002/F&WLD dated 26.07.2003 has sought approval of the Government of India for diversion of 7693.2257 Ha of vested

Subsequently, the Central Government as per letter F No. 8-16/2002-FC dated 06.02.2004 conveyed its approval for diversion of 7695.2257 ha of reserved forest/vested forest land for resettlement of landless tribals. A true copy of the above letter dated 06.02.2004 is produced herewith and marked as **Annexure XV.**

25. It is submitted that the Nodal Officer for implementing the FC Act has as per letter dated 04.07.2014, inter alia informed the State Government that the land in the possession of the University is having reserved forest status, that the State had moved I.A No. 1137 in I.A.No. 566 in W.P 202/1995 before the Apex Court seeking exemption from paying Net Present Value, that the land is included in the proposal sanctioned by the GoI in Annexure XIII letter dated 21.08.2003 and that in the meeting convened by the Chief Minister on 01.10.2013, it was decided to continue with the construction activities in the land. A true copy of the above letter dated 04.07.2014 is produced herewith and marked as **Annexure XVI.**
26. It is submitted that due to non implementation of the assignment of land to the Tribal families, they encroach upon the other forest land in Wayanad district. The lands meant for them are used for some other purpose. The Divisional Forest Officer, North Wayanad Division on a request under the Right to Information Act has furnished the details of encroachment as on 31.07.2012. A true copy of the details furnished by the Divisional Forest Officer, North Wayanad Division is produced herewith and marked as **Annexure XVII.** Similarly, the Divisional Forest Officer, South Wayanad Division on a request under the Right to Information Act has furnished the details of encroachment, a

assignment to landless tribals. However, the land in Sy. No. 181(Part), 180/1A, 2A of Kunnathidavaka Village stipulated to be distributed for the benefit of the Scheduled Tribe community, is utilized for value addition of lands in nearby areas. To put it differently, real estate people has found the establishment of a University as a shield to defend allegations of ecological imbalance or violation of FC Act. A learning centre disregarding the basic ecological values as well as Tribal welfare is a public waste of money. It is a fraud on the constitutional Governance.

- 29.** It is also submitted that the 100 acres of land in question includes grasslands, shola forest and the destruction of which cannot be compensated or reversed. The Kunnathidavaka village is notified as an Ecologically Sensitive Area. Further, the terrain is steep hills and construction activity would damage the geo-ecological balance. In the circumstances, intervention is urgently needed and stop all the construction activities in the 100 acres of land, prosecute the offenders including stoppage of pension or salary, direct restoration of the physical status of the land, as otherwise, the ecology of the area would be lost forever.

GROUNDS

(Please add)

VII. Prayer

For these and other reasons to be urged at the time of hearing, it is humbly prayed that necessary orders may be issued to stop all the construction activities in the 100 acres of land, prosecute the offenders for violation of Forest (Conservation) Act, 1980 including stoppage of pension/salary and direct restoration of the

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Dated this the day of August, 2014

BEFORE THE HONOURABLE GREEN TRIBUNAL

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No. ,, Wayanad, Kerala.
A registered society for protection of ecology and forests.
- II. RESPONDENTS: Union of India represented by its Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, New Delhi.
- State of Kerala represented by its Chief Secretary,
Secretariat, Thiruvananthapuram.
- Addl. Chief Secretary to the Government, Revenue
Department, Secretariat, Thiruvananthapuram
- Addl. Chief Secretary to the Government, Forest
and Wildlife Department, Secretariat,
Thiruvananthapuram.
- Principal Chief Conservator of Forests and Head of
Forest Forces, Forest Head Quarters,
Thiruvananthapuram.
- Additional Principal Chief Conservator of Forests
(Special Afforestation) & Nodal Officer, Forest
Head Quarters, Thiruvananthapuram.
- Divisional Forest Officer, South Wayanad Division,
Wayanad District.
- District Collector, Wayanad District.
- Kerala Veterinary and Animal Sciences University
represented by its Registrar,
Lakkidi P.O., Wayanad 673 576

Vice Chancellor, Kerala Veterinary and Animal Sciences University, Lakkidi P.O., Wayanad 673 576

STATEMENT OF Facts

I. APPLICANT

The applicant, the Wayanad Prakrithi Samrakshana Samithi (Society for Conservation), Wayanad is a registered voluntary organization working in the field of environmental conservation. It came into being in the nineteen-seventies as a peoples' reaction to large scale elephant poaching and sandalwood smuggling in Wayanad and adjacent Karnataka and Tamil Nadu forests. Later, it succeeded in preventing clear felling of forests in the catchment area of Kabani, a tributary of Cauvery River by Chipko-model agitation. Other landmark achievements in the history of the Society are (i) prevention of planting exotic tree species in the high altitude grasslands of Brahmagiri, Banasura and Chelembra peaks, (ii) stoppage of illegal quarrying and mining of sand in many places in Wayanad, (iii) saving unique island forest of Kuruva in Kabani river from ill-advised social forestry scheme, (iv) protection of pre-historic monument of Edakkal caves from wanton destruction by tourists. Even though the State Archeology Department notified Edakkal Cave as a protected monument, it did nothing for its safety. It was the Society which erected an iron gate at the entrance of the cave and kept it under lock and key for years. When the Government appointed a Custodian, the Society handed over the keys, (v) protection of forest fires. For the first time in Kerala, the Society started a campaign to prevent forest fire, forcing Government to take action in this regard (vi) Night traffic ban in National Highway 212 passing through Bandhipur National Park and Wayanad Wildlife Sanctuary.

II. ISSUE IN BRIEF:

The Kerala Veterinary and Animal Sciences University (hereinafter referred to as the University for short) established under an Act of Kerala State Legislature is in possession of 100 acres of land in

Kunnathidavaka village in Wayanad District of Kerala. The status of the land is reserved forest. It was a private forest vested under Section 3 of the Kerala Private Forest (Vesting and Assignment) Act, 1971 and set apart for assignment to the Scheduled Tribe Community. The State Government had included the said land in the list of land to be allotted to them and got the approval of the Central Government as well as exemption from payment of Net Present Value (NPV for short) from the Hon'ble Supreme Court. Now, the university is going on with construction of things like swimming pool, helipad, international stadium, etc according to their master plan, destroying biologically rich grasslands. The construction activities are against the provisions of Forest (Conservation) Act, 1980 and would have adverse impact on the ecology of the area, and will destroy the forest surrounding the hills and the streams originating from them.

III. Wayanad in General:

1. WAYANAD (also spelled as Wynad) is one of the hill districts of Kerala. Kalpetta, the headquarters of the district is 76 Kms east of the nearest coastal city of Kozhikode.
2. The green paradise called Wayanad is nestled among the mountains of Western Ghats. Its elevation from sea level is between 700 and 1400 meters. Brahmagiri, Banasuran and Chembra are the tallest peaks of Wayanad Western Ghats. These peaks, connected by a chain of lesser hills form the western boundary of Wayanad. The western slopes of the mountains are steep, whereas, towards the east the terrain is gently descending. However, up to the Karnataka-Tamil Nadu border, the landscape is undulating, with hillocks and valleys.
3. It is submitted that the taller peaks in western end of Wayanad houses the unique shoal-grasslands ecosystem. The valleys are covered by ecologically rich tropical wet evergreen forest. The eastern border is clothed by tropical deciduous forest rich in large mammals like elephant, gaur, sambar, tiger and leopard. Two blocks of forests in eastern boundary of Wayanad constitute Wayanad Wildlife Sanctuary. It is contiguous with Nagarhole National Park and the Bandhipur Tiger Reserve in Karnataka and the Mudumalai tiger Reserve in Tamil Nadu. Together they form the habitat harbouring the largest number of Asian Elephants (*Eliphans Maximus*). Also this shield of forests is protecting Wayanad from the arid conditions of Deccan Plateau.
4. It is submitted that the land between the tropical wet evergreen forests on the western side and tropical deciduous forests on the

eastern side has been converted in to a beautiful mosaic of plantation and paddy fields. Plantations of coffee, tea, pepper etc., are raised on the hills and rice is cultivated in the wet lands in the villages.

5. It is submitted that the east flowing Kabani River, one of the main tributaries of the mighty Cauveri originates from the western watersheds of the three peaks mentioned earlier. Four branches of Kabani, namely, Kalindi, Mananthavady, Noolpuzha and Panamaram flowing through Wayanad, quenches the thirst of the land during the dry months. Further below, three large reservoirs of **noogu, tharaka and beechinahally in** Karanataka are fed by the water from Wayanad. The main source of the Mettur Reservoir in Tamil Nadu also also is the Wayanad Western Ghats. Thus, any ecological damage like deforestation in the mountains of Wayanad is bound to affect the life the life in Karnataka and Tamil Nadu seriously. Alos, numerous west flowing rivers of Kerala like Valapattanam, Mayyazhi, Kuttiadi, Ancharakandi and Chaliyar also originates from the western water sheds of Wayanad hills. Thus, Wayanad is an important water reservoir of south India.
6. It is submitted that Pookot is a mountain area in the crest-line of the Western Ghats. The place where the University plans to build helipad, swimming pool, etc. is hardly one kilometer away from Lakkidi where the highest rainfall (up to 6000 mm) was recorded in Kerala till recently.
7. It is submitted that Pookot is flanked on the north by Banasuran, on the south by Chembra, two of the highest peaks in Wayanad. Pookot and other area between these two peaks harbouring several endemic species of flora and fauna, are very rich in biodiversity. For example, Chembra just south of Pookot, is the only place from where the recently re-discovered orchid *Ipsa Malabarica* has been reported outside Silent Valley National Park. This area is also the habitat of several endemic and endangered birds like Nilgiri Laughing Thrush. Several species of bush frogs like *Raorchestus nerestigona*, *Raorchetus ochalandra*, *Raorchestus chromosynchysi* were discovered from the area recently, and herpetologists believe that many remains undiscovered in the forests of Wayanad. Endemic mammals like the leopard cat and the lesser Malabar Flying Squirrel have been spotted in Lakkidi. It is considering the biological richness of Wayanad that it was included in the core of Nilgiri Biosphere Reserve.
8. It is submitted that the National Highway 212 from Kozhikode to Mysore passes through Pookot. The road and the settlements on either side of the road bifurcates the forest though the crestline of Western

Ghats in Wayayand. The northern half contains important wildlife habitats like Lady Smith, Kurichimala, Banasuran, Periya, Kambamala and Lovedale forests. Similarly, Chembra, Vellarimala and Mundakkai forests are on the southern segment. The western flank of Lakkidi area is 90 degree slope and large animals like elephants and gaur cannot cross over. A corridor for migration of animals is necessary for the wildlife habitat in the area and by opening up natural habitats further with mega constructions is forestalling any future wildlife management options.

9. It is submitted that in Kerala, Wayanad has the highest density of tribal population. About 20% of the populations of Wayanad belongs to Scheduled Tribes. In absolute number also Wayand tops in Kerala. According to 2001 Census, the number of Tribals in Wayanad is 1, 36, 062 (36% of the total tribal population in Kerala). Paniya, Adiya, Kattunaikka, Ooroli, Kuruma and Kurichia are the main Tribals of Wayand. Akttunaikkas, Adiyas and Paniyas are the most primitive tribals of Wayanad depend largely on the forest for their subsistence. Kurumas and Kurichias are mainly agriculturists and Ooralis (also known as Ooralikuruma) are artisans.
10. It is submitted that most of the members of the primitive Tribes of Paniya, Adiya, Kattunaikka and Oorali are landless poor. During the colonial rule, the forest dwelling tribals were pushed out of the forest for raising plantations by Europeans. After the independence, large waves of settlers from central Kerala uprooted them from their land. Even though, the Kerala Legislature enacted a bill to protect the rights of the Tribals over their land it was never implemented. Projects envisaged to provide livelihood to tribals failed due to corruption and mismanagement.

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11. The Legislature of Kerala enacted the Kerala Private Forest (Vesting and Assignment) Act, 1971 (Act 26 of 1971) (hereinafter referred to as the Act for brevity) to vest the private forest in the State for the purpose of assignment to landless poor as well as for conservation of forest land. The High Court of Kerala struck down the provisions of the Act as unconstitutional on 21.06.1972. Later, on appeal to the Apex Court, the said enactment was held to be constitutionally valid by judgment dated 18.09.1973. During the interregnum, large areas were converted as plantations, so that they can be sought to be exempted

from the provisions of the Act. For Example the areas held by Poddar Plantations in Wayanad district.

12. The Government of Kerala as per G.O (Rt) No. 2624/73/AD dated 28.11.1973 constituted a Special Committee under Rule 4 of the Kerala Private Forest (Vesting and Assignment) Rules, 1973 to advise the Government regarding the lands to be retained, assigned, etc. The Committee in its Report, known as Vested Forest Committee Report (VFC Report) identified the areas to be assigned, reserved, etc. In the said Report, the Committee at Paragraph 4.4 opined that: **Special provisions for assignment to Tribals:** The second proviso to Rule 8 enables the Government "If they are satisfied that it is necessary to promote the interest of the Scheduled Tribes allot separate blocks of land only to members of the Scheduled Tribes". The Committee has been fully conscious of the special distress and needs of the Tribal population. In so far as tribal communities resident within vested forest are concerned, eg. In the Vadassery Forests, the Committee has recommended earmarking of lands for their occupation even though the tract as a whole has necessarily to be protected as a forest for the reasons envisaged in Rule 3. ***This is because it would be possible to so integrate them with forestry operations that the dangers of utilization in these "reserved" tracts are strictly controlled.*** In other areas, like Wayanad and Attappady, special tracts have been set apart exclusively for them. **A sample scheme for a dairy community for scheduled tribes based on the grasslands at Pookote in South Wayanad is at Annexure IIIC.** Annexure IIIC of the above Report provide for a draft proposal for establishing a dairy colonization farm in south Wayanad. Relevant portion of the Report and a copy of Annexure IIIC is produced as **Annexure I.**
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V. LAND TRANSFERRED TO REVENUE DEPARTMENT

14. It is submitted that as per Rule 9 of the Kerala Private Forest (Vesting and Assignment) Rules 1974, (hereinafter referred to as the Rules for brevity) provides for the order of preference for assignment of land and that the Scheduled Tribes are included as the 1st preferred category. It is submitted that Rule 15 of the Rules require that the lands meant for assignment be handed over to the Revenue Department for assignment. The Custodian of Vested Forest (Custodian for short) under the Act identified 10, 063 Ha of vested forest for assignment. Thereafter, the Custodian as per letter dated 07.12.1977 requested the State Government to issue orders for handing over the land to be assigned to the Revenue Department. The State Government as per G.O (Ms) No. 29/78/AD dated 25.01.1978 ordered that 10, 061 Ha of Vested Forest Land, the details of which were appended therein, is set apart for assignment and directed the Custodian to hand over the above to the Revenue Department by 01.02.1978. In the annexure to the above G.O, the lands mentioned in Annexure III were also included. A copy of the above G.O, without the appendix is produced herewith and marked as **Annexure IV**. It is submitted that the appendix to Annexure IV G.O was subsequently replaced by the appendix in G.O (Ms) No. 326/78/AD dated 14.12.1978. It is further submitted that in the G.O dated 14.12.1978, the extent of land assigned was modified as 9938.0814 Ha. In the above G.O also, the vested forest lands covered by Annexure II was included. A true copy of the G.O dated 14.12.1978 is produced herewith and marked as **Annexure V**.
15. It is submitted that as visualised in the Annexure III C to the Annexure I Vested Forest Committee Report, the Government considered the Project for the formulation of a Tribal Collective Farm in the Pookot lake area, comprised in Vested Forests of South Wayanad Taluk and accorded administrative sanction for the implementation of the Project, as per G.O (Ms)73/79/AD dated 17.02.1979. In the above G.O. the Government ordered to provide funds. It is also stipulated that the State Forest Department will continue to be in charge of Security and protection of the vested Forest land until the Society is in full possession of it. A true copy of the above G.O dated 17.02.1979 is produced herewith and marked as **Annexure VI**. From Annexure I to VI, it can be seen that the 420 Ha land area covered by Annexure I to VI are having the status of reserved forest. In the above G.O, the

State Government entrusted the Project with the Director of Tribal Welfare Department as implementing authority. The Director of Tribal Welfare was directed to address Union of India for funds for implementing the Project. The applicant is unaware of the details of the grant made by the Union of India for the betterment of the Tribals.

16. It is submitted that the Parliament enacted the Forest (Conservation) Act, 1980 (hereinafter referred to as the FC Act for brevity) providing for conservation of forests. The FC Act came in to effect from 25.10.1980. Section 2 of the FC Act provided that the State Government or any other authority shall make, except with prior approval of the Central Government, order any forest land or any portion be used for any non forestry purpose. The above Act was later amended with effect from 15.003.1989 making it obligatory to get prior approval of the Central Government for assignment of forest land. The amendment also provided for penalty for contravention of Section 2 of the said Act.

VI. KNOWLEDGE OF THE STATE GOVERNMENT REGARDING THE NEED TO OBTAIN THE PRIOR APPROVAL FROM UOI

17. It is submitted that the Secretary to Government, Forest and Wildlife Department, who was then known as the Agricultural Production Commissioner informed the Chief Conservator of Forests that there is no specific orders for disreservation of the forest area while according sanction for the allotment of the vested forest land to the collective tribal farming and that before consideration of proposed assignment, approval of Government of India is required. Accordingly, the Secretary to Government directed the Chief Conservator of Forests to forward urgently, the proforma and sketch and other details, in accordance with the prescribed procedure for seeking sanction from the Government of India as per letter dated 22.09.1988, a true copy of which is produced herewith and marked as **Annexure VII**. In view of Ann. VII, the respondents cannot be heard to contend that no approval from Government of India is necessary for assignment of vested forest land or for any other non forestry activity over the land covered by Annexure III Notification.
18. It is submitted that on resurvey, the land allotted to the Pookot Girijan Collective Farming Co-operative Society Ltd was found as 531.1675 Ha. Due to various factors, including insufficient governmental support, the Society could not utilize the entire extent of land allotted and the District Collector as per his letter dated 09.05.1994 recommended to

transfer 100 Ha of land to another Tribal Society, namely, the Mananthavady Tribal Plantation Co-operative Society Ltd. (Priyadarshini Tea Estate). The State Government as per G.O (Ms) No. 476/94/RD dated 12.09.1994 accorded sanction for transfer of 100 Ha of land in the possession of Pookot Girijan Collective Farming Co-operative Society Ltd. to Mananthavady Tribal Plantation Co-operative Society Ltd. A copy of the above G.O is annexed herewith as **Annexure VIII.**

19. It is submitted that the State Government as per G.O (Rt) No. 3643/98/RD dated 13.08.1998 ordered that 100 acres of land in in Sy. No. 181(Part), 180/1A, 2A of Kunnathidavaka Village in the possession of Pookot Girijan Collective Farming Co-operative Society Ltd. will be transferred to Agricultural University free of cost for starting veterinary College. A copy of the above GO is annexed as **Annexure IX.** This forest land vested under the provisions of the Act 26 of 1971 remained as a reserve forest and this action of the Government transferring the land to the Agricultural University for starting a Veterinary College is clearly against the provisions of the Forest (Conservation) Act, 1980, since it is a non forestry activity.
20. It is pointed out that out of the land allotted to the Pookot Girijan Collective Farming Co-operative Society Ltd. 10 Ha of land was given to Navodaya School, 8 Ha to Model Residential School and 2 Ha for Jail. These are all done without getting prior approval of the GoI under Section 2 of the Forest (Conservation) Act.
21. It is also pointed out that another voluntary organisation had filed a Writ petition before the Hon'ble High Court of Kerala against the construction of building near Pookot lake, which came to be dismissed and Writ Appeal was carried to a Division Bench, as W.A. No. 3549 of 2001. When the above writ appeal came up before the Bench, the Government Counsel for the State of Kerala had submitted that sanction under the Forest (Conservation) Act, 1980 has not been formally obtained and that steps are being taken to obtain necessary approval. The Division Bench as per judgment dated 07.12.2001 in W.A.No. 3549/2001 directed the State of Kerala not to carry out any construction in the Forest land in and around Pookodu lake without the approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980. A copy of the above judgment in W.A No. 3549/2001 is annexed herewith as **Annexure X.**
22. It is further pointed out that the High Powered Committee constituted by the GoK for Tribal Settlement and Development Mission in its meeting held on 29.11.2001 had decided to get the legal opinion of the

Advocate General as to the necessity to get prior approval under Section 2 of the Forest (Conservation) Act for assignment of land in the possession of the Pookot Girijan Collective Farming Co-operative Society Ltd. to the members of Scheduled Tribe community. A true copy of the above Minutes of the High Powered Committee is produced herewith and marked as **Annexure XI**. Thereafter, the Advocate General gave an opinion that the lands are forest lands, that assignment can be done only with the prior approval of the Central Government and that non compliance of the provisions of the Act would expose the Government officials to punishment under Section 3B of the FC Act. A copy of the above opinion of the Advocate General is annexed as **Annexure XII**.

23. It is submitted that the Government of Kerala as per letter No. 1053/C1/2002/F&WLD dated 26.07.2003 has sought approval of the Government of India for diversion of 7693.2257 Ha of vested forest land for resettlement of landless tribals in the State of Kerala. The Government of India on consideration of the proposals therein conveyed its 'Stage I' approval under Section 2 of the Forest (Conservation) Act for diversion of 7693.2257 Ha of land in Kasargode, Kannur, Wayanad, Palakkad and Malappuram districts for resettlement of landless tribals in the State of Kerala, as per MoEF letter No. F.No.8/16/2002-FC dated 21.08.2003. A copy of the above letter dated 21.08.2003 is annexed as **Annexure XIII**. The above approval was subject to fulfillment of certain conditions, which is not fully satisfied. It was stipulated in Annex. XIII that the Tribal families will have heritable but inalienable rights over the forest lands allotted to them.
24. It is submitted that in the purported compliance of Ann. XIII approval, the State Government had transferred 463.71 hectares of land belonging to the Sugandagiri Cardamom Project and 189.60 hectares of land belongs to Pookkot Diary Farm Project to the Kerala Forest Department as per G.O (Ms) No. 381/03/RD dated 08.12.2003. A true copy of the above G.O dated 08.12.2003 is produced herewith and marked as **Annexure XIV**. Subsequently, the Central Government as per letter F No. 8-16/2002-FC dated 06.02.2004 conveyed its approval for diversion of 7695.2257 ha of reserved forest/vested forest land for resettlement of landless tribals. A true copy of the above letter dated 06.02.2004 is produced herewith and marked as **Annexure XV**.
25. It is submitted that the Nodal Officer for implementing the FC Act has as per letter dated 04.07.2014, inter alia informed the State Government that the land in the possession of the University is having reserved forest status, that the State had moved I.A No. 1137 in

- I.A.No. 566 in W.P 202/1995 before the Apex Court seeking exemption from paying Net Present Value, that the land is included in the proposal sanctioned by the GoI in Annexure XIII letter dated 21.08.2003 and that in the meeting convened by the Chief Minister on 01.10.2013, it was decided to continue with the construction activities in the land. A true copy of the above letter dated 04.07.2014 is produced herewith and marked as **Annexure XVI**.
26. It is submitted that due to non implementation of the assignment of land to the Tribal families, they encroach upon the other forest land in Wayanad district. The lands meant for them are used for some other purpose. The Divisional Forest Officer, North Wayanad Division on a request under the Right to Information Act has furnished the details of encroachment as on 31.07.2012. A true copy of the details furnished by the Divisional Forest Officer, North Wayanad Division is produced herewith and marked as **Annexure XVII**. Similarly, the Divisional Forest Officer, South Wayanad Division on a request under the Right to Information Act has furnished the details of encroachment, a copy of which is produced herewith and marked as **Annexure XVIII**. From Annexures XVII and XVIII, it can be seen that the tribal family has encroached large forest area, which is due to the Governments inaction to address the needs of tribal people. It adversely affects the existing forest and environment.
27. The above documents would unambiguously show that the 100 Acres of land in Sy. No. 181(Part), 180/1A, 2A of Kunnathidavaka Village assigned to the Agricultural University is a vested forest having the status of reserved forest. Therefore, no non forestry activity can be carried on without getting prior approval of the Government of India. This 100 Acres of land in Sy. No. 181(Part), 180/1A, 2A of Kunnathidavaka Village is now in possession of the Kerala Agricultural and Veterinary and Animal Sciences University and they are carrying on with construction of helipad, international stadium, etc.
28. It is submitted that the Government of India granted prior approval for the land, including the land in the possession of the University, for assignment to the landless tribals. Therefore, activities that can be carried on the 100 acres of land is only assignment to landless tribals. However, the land in Sy. No. 181(Part), 180/1A, 2A of Kunnathidavaka Village stipulated to be distributed for the benefit of the Scheduled Tribe community, is utilized for value addition of lands in nearby areas. To put it differently, real estate people has found the establishment of a University as a shield to defend allegations of ecological imbalance or violation of FC Act. A learning centre disregarding the basic ecological

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BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Application No. 298 of 2014 (SZ)

Applicant(s) Respondent(s)
M/s. Wayanad Prakriti Samrakshana Vs Union of India, rep. by its Secretary
Samithi, Wayanadu Dist. MoEF, New Delhi and 9 others

Legal Practitioners for Applicant(s)
M/s. M. Santhanaraman and
M.R. Sivakumar

Legal Practitioners for Respondents
Mrs. C. Sangamithirai for R-1
Mrs. Suvitha, A.S. for R-2 to 9

Note of the Registry	Orders of the Tribunal
Order No.	Date: 19 th December, 2014 Heard the learned counsel for the applicant. The averments are looked into along with the materials available. The Tribunal is satisfied that there exists a substantial question connected to and concerned with environment and ecology to be decided by the Tribunal. Hence, the application is admitted. Mrs. C. Sangamithirai, the counsel undertakes to file memo of appearance for the 1 st respondent. Mrs. Suvitha, A.S, the counsel filed memo of appearance for the respondents 2 to 9. Fresh notice is ordered to the 10 th respondent. For filing reply, memo of appearance of the 1 st respondent and appearance of the 10 th respondent, the matter is posted to 25.2.2015.

The counsel for the applicant presses for an interim relief for an injunction to restrain the 10th respondent from carrying on further constructional activities. The case of the applicant in short is that the 10th respondent Kerala Veterinary and Animal Science University (KVASU) is in possession of 100 acres of land. The status of the land is reserved forest. It is actually a private forest vested under Section 3 of the Kerala State Forest (Vesting and Assignment) Act, 1971. Apart from that it was also set apart for assignment to the Scheduled Tribe Community. The State Government had included the said land in the list of land to be allotted to them and got the approval of the Central Government as well as an exemption from payment of NPV from the Hon'ble Apex Court. While the matter stood so, the KVASU is carrying on its constructional activities like swimming pool, helipad, international stadium etc based on their master plan. The counsel for the applicant would further submit that from a communication addressed by the Ministry of Environment & Forests, Government of India to the Additional Chief Secretary, Government of Kerala, Forests & Wildlife (C) Department, Thiruvananthapuram dated 20th November, 2014 which speaks about the seriousness of the activities done and hence necessary steps has got to be taken to stop the constructional activities. Despite the objections by the

Forests Department and by the State also, the 10th respondent is proceeding with the constructional activities and hence it has got to be stayed by the intervention of the Tribunal .

After hearing the counsel for the applicant and looking into the materials available, in particular, the communication dated 20th November, 2014 referred to by the counsel addressed by the Ministry of Environment and Forests, Government of India to the Additional Chief Secretary, Government of Kerala, Forests & Wildlife (C) Department , Thiruvananthapuram, the Tribunal is satisfied that the applicant has made out a prima facie case for granting an interim relief by restraining the 10th respondent from making any constructional activities. Accordingly the interim order is granted by restraining the 10th respondent from making any constructional activities until further orders. The matter is posted to 25.2.2015.

B.S.Sajwan
(Expert Member)

Justice M. Chockalingam
(Judicial Member)

Item No. 03

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

Original Application No. 577/2018
(Earlier O. A. No. 298/2014) (SZ)

Wayanad Prakriti Samrakshana
Samithi, Wayanadu District, Kerala

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 30.01.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. K. S. Rajesh Kumar Advocate for Mr. M
. Santhanarman, Advocate

For Respondent (s): Mr. P. Sureshan, Advocate for R-10

ORDER

1. The issue in this application is use of 100 acres of land having trees for a State University called Kerala Veterinary and Animal Sciences University established under the act of Kerala State Legislature.
2. The land was given as per the recommendations of the Committee under the provision of Kerala Private Forest (Vesting and Assignment) Act, 1971 (Act 26 of 1971) to promote the interest of scheduled tribes. 100 acres of land was part of 420.50 ha. notified under the said act.
3. The approval of the Government of India was only for assignment of the land to the landless tribals and not for any other non-forest activity.

4. In response to the application, the stand of the State of Kerala is that transfer of forest land to the university is to enhance the tribal resettlement.
5. The University is extension of dairy society meant to provide livelihood to the tribals and running of veterinary college. Farm labour in the colleges is recruited out of tribals. The State also proposed this to the Central Government which was accepted by the Ministry of Environment, Forest and Climate Change on 21.08.2003.
6. After transferring the land to the University, the State Government handed over 190 ha. area to the forest department. Land handed over to the university has been utilised for tribal resettlement.
7. It is undisputed that the land was utilised for the University more than 14 years ago. The University has been actually set up by the State. In these circumstances, we do not find any ground to interfere in the matter.

The application is dismissed.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 30, 2019
Original Application No. 577/2018
JG