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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL.) NO. OF 2021
With
PRAYER FOR INTERIM RELIEFS

(Arising out of the Final Judgment and Order of the High Court of Kerala
at Ernakulam in WP(C).No.3884 OF 2021(S), dated 22.02.2021)

IN THE MATTER OF:

WAYANAD PRAKRITHI SAMRAKSHANA SAMITHI

...Petitioner

Versus

STATE OF KERALA &Ors.

...Respondents

PAPER BOOK
(For Index Kindly See Inside)

ADVOCATE FOR THE PETITIONER: MR. P.K. MANOHAR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR &

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 22ND DAY OF FEBRUARY 2021 / 3RD

PHALGUNA, 1942 WP(C).No.3884 OF 2021(S)

PETITIONER:

Wayanad Prakrithi Samrakshana Samithi

Represented its President N Badusha,

S/O Khansa, Nayketti P O, SulthanBathery,

Wayanad, Kerala-673 592.

BY ADV. SRI.M.P.PRAKASH

RESPONDENTS:

1. State of Kerala Represented By The Chief Secretary To The

Government, Secretariat, Thiruvananthapuram- 695001.

2. Secretary to The Government Forest Wildlife Department,

Secretariat, Thiruvananthpauram-695 001.

3. Secretary to The Government Revenue Department,
Secretariat, Thiruvananthapuram-695 001.
4. Secretary to The Government Scheduled Cast And
Scheduled Tribe Development Department, Secretariat,
Thiruvananthapuram-695 001.
5. Principal Chief Conservator of Forest And Head Of Forest
Forces, Forest H.Q, Vazhuthacaud, Thiruvananthapuram-
695 014.
6. Divisional Forest Officer South Wayanad Forest Division,
Kalpetta, Wayanad-673 121.
7. District Collector Wayanad-673 121.
8. En Oru Society Represented by Its President and Sub
Collector, Mananthavady, Pookot, Wayanad, Pin-673 576.
9. Union of India Represented By Its Secretary, Ministry Of
Environment, Forest And Climate Change, Indira
Paryavaran Bhavan, Jor Bagh Road, Alinganj, New Delhi-
110 003.

SRI. B.MURALEEDHARAN, SR GP FOR R1 TO R7,

SRI.B.PRAMOD, CGC FOR R9

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22.02.2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 22nd day of February, 2021

S.Manikumar, C.J.

1. Wayanad Prakrithi Samrakshana Samithi, represented by
its President, Wayanad, has filed this writ petition for the
following reliefs:

“(i) Issue a writ in the nature of a mandamus or any other
writ, direction or order commanding the respondents not
to carry on any non forestry activity in the land covered by
Ext. P2 Notifications, without complying with the
provisions contained in Section 2 of the Forest
(Conservation) Act, 1980;

(ii) Issue a writ in the nature of a mandamus or any other writ, direction or order commanding the respondents to return the vested forest lands covered by Ext. P2 notifications and remain unassigned to the tribal community for agriculture to the forest department for conservation of forest, in the larger environmental interest;

(iii) Issue a writ in the nature of a mandamus or any other writ, direction or order commanding the State Government to appoint a Commission to enquire and file a comprehensive report on the different schemes initiated for social and economic benefit of the tribal communities in Wayanad district and the outcome of such schemes, within a time frame that may be fixed by this Court;

(iv) Issue a writ in the nature of a mandamus or any other writ, direction or order commanding the 9th respondent to prosecute all those who are responsible for allowing non forestry activity in the land covered by Ext. P2

notifications, within a time frame that may be fixed by this Hon'ble Court"

2. Grounds raised in support of the prayers are as hereunder:

"A. Tourism is a non forestry activity and any such activity in the land covered by Ext. P2 require prior approval under Section 2 of the Forest (Conservation) Act, 1980. Therefore, the activities now carried on by the 8th respondent in the forest land covered by Ext. P2 are illegal and is liable to be interdicted.

B. Protection and improvement of environment and safe guarding of forest is a directive principle of State policy. Further, the respondent cannot carry on any non forestry activity in the forest land without complying payment of NPV and prior approval under Section 2 of the Forest (Conservation) Act, 1980. The land in the possession of the 8 the respondent is a reserve forest and no non forestry project can go on without complying with the provisions of

law. Therefore, the tourism activity, which would have adverse effect on forest is liable to be interdicted.

C. It is submitted that the tribal community are the most vulnerable people and the projects are commenced in their name, spending large amounts. However, the tribal communities are not benefited and only the middle men are benefited. Various projects commenced and left not functioning. Tribal empowerment is not forthcoming. As can be seen from Exts. P7, P8 and P9, payment of NPV was exempted on the ground that the forest land would be assigned to the landless tribals under the provisions of Land Reforms Act. Since, the tribal community people cannot approach this Hon'ble Court, it is just and necessary to appoint a Commission to enquire and file a comprehensive report on the different schemes intended for socio-economic improvement of tribal communities at Wayanad district, the outcome of such schemes and also suggest remedial programs.

D. The petitioner had pointed out the violations in Ext. P10 representation; however, no action is taken by the 9th respondent. It is necessary that directions may be issued to the 9th respondent to prosecute all those who are responsible for allowing non forestry activity in the land covered by Ext. P2 Notification.

E. The private forests vested under Ext. P2 Notification was intended to be assigned to the landless tribal people for agricultural purposes. Such lands cannot be allowed to be used for non agricultural and non forestry purposes. It is clearly illegal and is also against the undertaking made before the Hon'ble Supreme Court as evidenced by Ext.P7 order. Hence, it is prayed in the larger environmental interest that a direction may be issued to return the vested forest lands covered by Ext. P2 Notification and remain unassigned to the tribal community for agriculture be returned to the forest department for conservation of forest."

3. During the course of hearing of this appeal, when attention of Mr. M.P. Prakash, learned counsel for the petitioner, was invited that in respect of forest lands being allotted to the Kerala Veterinary and Animal Sciences University, for the purpose of establishment of a veterinary college, there was a proceeding before the National Green Tribunal, New Delhi, learned counsel produced a copy of the order in Original Application No.577 of 2018 (earlier O.A.No.298 of 2014) (SZ), between Wayanad Prakrithi Samrakshana Samithi and Union of India and Others. Short order made in O.A. No.577/2018 dated 30.01.2019 is reproduced:

“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. 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.”

4. Perusal of the statement of facts shows that in the present writ petition, allotment of lands to En Oru Society, represented by its President and Sub Collector, Mananthavady, Wayanad, (respondent No.8), which, according to the petitioner, is tourism, a non forestry activity, is questioned. Emphasis is also made on Exhibit-P2, a notification issued by Government of Kerala, Forest Department dated 8.7.1977, which states that, prior approval is required under Section 2 of the Forest (Conservation) Act, 1980. Similar were the grounds raised in O.A.No.577 of 2018.

5. According to the petitioner, protection and improvement of environment and safe guarding of forest is a Directive

Principle of State Policy. Petitioner has also submitted that despite the representation dated 15.9.2020 (Exhibit-P10), no action has been taken by the Union of India, represented by its Secretary, Ministry of Environment, Forest and Climate Change, New Delhi (respondent No.9).

6. In support of the prayers sought for, petitioner has also relied on Exhibit-P5 judgment made in W.A. No.3549 of 2001 dated 7.12.2001, which reads thus:

“Appeal admitted. Notice made returnable forthwith. Respondents 3 and 5 appears through Government Pleader and waive service. Respondents 1, 2 and 4 appear through Sri. C. S. Abdul Samad, Standing Counsel.

2. The learned Government Pleader makes a statement on behalf of the State of Kerala, that the approval of the Central Government in the Ministry of Environment and Forests, as contemplated under Section 2 of the Forest Conservation Act, 1980 r/w Rules, has not been, formally obtained by going through the procedure prescribed

thereunder. He states that steps are being taken to obtain the necessary approval.

3. In the circumstances, we are satisfied that as at present, any proposed construction would be contrary to Section 2 of the Forest Conservation Act, 1980.

4. In the result, the order of the learned Single Judge dismissing the Original Petition is set aside, and the State Government is directed not to carry out any construction in the Forest land in and around Pookodu Lake without obtaining the approval of the Central Government under Section 2 of the Forest Conservation Act read with the Rules thereunder. The appeal is allowed as above. No order as to costs."

7. Exhibit-P9 letter dated 20.11.2014, issued by the Government of India, Ministry of Environment, Forests and Climate Change, respondent No.9, to the Additional Chief Secretary, Forest and Wildlife Department, Thiruvananthapuram, is extracted:

“Indira Paryavaran Bhawan,
Jor Bagh Road, Aligaaj,
New Delhi: 110003,
Dated: 31st October, 2019

To,
Additional Chief Secretary,
Forest and Wildlife Department,
Government of Kerala,
Secretariat, 1st Floor, Main Block,
Thiruvananthapuram -695001

Sub: Diversion of 7693.2257 ha of Reserved Forest/Vested Forest land in Kasaragod, Kannur, Wayanad, Palakkad and Malalappuram Districts- for resettlement of landless tribals in the State of Kerala: Alleged diversion of forest land for creation of facilities for Kerala Veterinary & Animal Sciences University (KVASTJ) etc., in violation of the provisions contained in Forest (Conservation) Act, 1980-regarding.

Sir,

I am directed to refer to order dated 19th March, 2019 of Hon'ble High Court of Kerala at Ernakulam in

WP(C) No. 32777/2014(S) in the matter Green Cross World Environment Protection Action Group vs Union of India as forwarded by Kerala Veterinary and Animal Sciences University, Wayanad, Kerala. 2. The direction of Hon'ble High Court along with the status of the proposal for diversion of 7693.2257 ha of Reserved Forest/Vested Forest land in Kasaragod, Kannur, Wayanad, Palakkad and Malappuram districts for resettlement of landless tribals in the State Kerala was discussed in Forest Advisory Committee (FAC) constituted under Section 3 of Forest (Conservation) Act, 1920, meeting held on 26.09.2019. The minutes of the meeting may kindly be seen at parivesh.nic.in. The FAC inter-alia recommended that the State Government shall:

- i. With the help of Forest department, survey and identify the actual area broken up and required (within the 40 ha under occupation of KVASU) for the University.

ii. Submit proposal under FC Act, 1980 for diversion of such forest land, (broken up within 40ha land) for the purpose of KVASU, along with details of reasons under which the forest land was granted to the University without approval FC Act.

iii. The remaining forest land out of 40ha under occupation of KVAU (after above proposals in para (ii) is made, shall be returned to the forest department, if not required for the purpose for which it was diverted in 2004.

3. The recommendation of FAC has been accepted by the competent authority in the Ministry. In view of above, State Government is requested to comply with the decision of Ministry as indicated in para (2) above for further necessary action.

Yours faithfully,

Sd/-

Shrawan Kumar Verma

Dy. Inspector General of Forest (FC)"

8. When attention was drawn to the statement and reasons of the National Green Tribunal Act, 2010, and Section 15 of the said Act, Mr.M.P. Prakash, learned counsel for the petitioner, referring to the contentions in paragraph No.13 of the statement of facts, filed in support of the writ petition, submitted that the Tribunal is not competent to consider all the reliefs sought for. He also submitted that the State Government have introduced certain socio-economic schemes to improve the living conditions of the tribals and to bring them into the mainstream. It is his further submission that National Green Tribunal is not competent to address the issues raised in paragraph 13 of the statement of facts.

9. Paragraph 13 of the statement of facts relied on by the petitioner is extracted hereunder:

“13. It is submitted that the State Government introduced many socio-economic schemes to improve the living conditions and to bring the tribals into the mainstream.

The following are some of the Schemes:

a). Cheengeri Tribal Extension Scheme: In 1957, the Government acquired 500 acres of land for rehabilitation of 144 tribal families. They were assured of assignment of 5 acres of land. However, the tribal people to the knowledge of the petitioner were not assigned any land. The State Government has spent crores of rupees, but the tribals were not benefited.

b). Priyadarshini Transport Co-operative Society: Each year buses would be purchased but due to bad management, within a year or two, the buses become useless. Crores were spent, but the tribals are not benefited much.

c). Pookot Girijan Collective Farming Co-operative Society Ltd: This society was allotted the vested forest land

measuring 531.1675 Ha. However, due to various factors, including insufficient governmental support, the Society could not utilize the entire extent of land allotted. Large amounts were spent in the name of tribal welfare.

d). Mananthavady Tribal Plantation Co-operative Society Ltd. (Priyadarshini Tea Estate): Out of the above 531.1675 Ha land 100 Ha of land were allotted to this society. The tribal people are not benefited, but the dependent government servants benefited.

e). Sugandagiri Cardamom Project: In order to rehabilitate bonded tribal people, vested forest area were allotted. More than 500 crores of rupees were spent. In 2005, this project was shut down. The tribals are not much benefited but many intermediaries are benefited.

f). Pambra Coffee Plantation: Two plantations at Pambra (400 acres) and Cheengeri (600 acres) were functioning under the Kerala Forest Development Corporation, utilizing forest land. However, this was shut down in 2005 and the tribals are eking their livelihood on daily wage work. Large amounts were spend in the name of tribal welfare.

g. Karappuzha Rehabilitation Project: This commenced for the rehabilitation of about 350 tribal families displaced from Karappuzha dam project. The buildings constructed become dilapidated and become uninhabitable. To the knowledge of the petitioner, no tribal people are residing there.”

10. Learned counsel for the petitioner also submitted that it is the duty of the petitioner to bring to the notice of this Court, which has powers, under Article 226 of the Constitution of India, to consider the abovesaid facts, pleaded in the writ petition, in

support of the prayers sought for. Learned counsel for the petitioner further submitted that the decision in O.A.No.577 of 2018 has been taken on appeal before the Hon'ble Apex Court and that the same is pending.

11. Heard Mr. M.P. Prakash, learned counsel for the petitioner and perused the material available on record.

12. The National Green Tribunal Act, 2010, Act 19 of 2010, is an Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

13. Statement of Objects and Reasons in the National Green Tribunal Act, 2010 are as follows: "Statement of Objects and Reasons -- The rapid expansion in industrial, infrastructure and transportation sectors and increasing urbanisation in recent

years have given rise to new pressures on our natural resources and environment. There is a commensurate increase in environment related litigation pending in various Courts and other authorities. The risk to human health and environment arising out of hazardous activities has also become a matter of concern.

2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment

Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5 Taking into account the large number of environmental cases pending in higher Courts and the involvement of multi disciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialised environmental Courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental Courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialised tribunal to handle the multi disciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.

7. Accordingly, it has been decided to introduce the National Green Tribunal Bill, 2009 which inter alia provide (a) for establishment of a the National Green Tribunal which shall consist of: a Chairperson and such number of Judicial and Expert Members as the Central Government may notify (b) that a person who is or has been a Judge of the Supreme Court or a Chief Justice of a High Court shall be eligible for appointment as the Chairperson or Judicial Member of the Tribunal; (c) that a person who is or has been a Judge of a High Court shall also be eligible for appointment as a Judicial Member; (d) that a person who is either an expert in physical sciences or life sciences or engineering or who has administrative experience in dealing with environmental matters shall be qualified for appointment as an Expert Member; (e) that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in the Schedule I to

the Bill and to grant relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I to the Bill and to hear appeals under certain enactments specified in the Schedule III to the Bill; (f) The repeat of the 'National Environmental Tribunal Act, 1995' and Environment Appellate Authority Act, 1997.

8. The Bill seeks to achieve the aforesaid objectives.”

14. Chapter III of the National Green Tribunal Act, 2010 deals with jurisdiction, powers and proceedings of the Tribunal. Section 15 deals with powers of the Tribunal to grant relief, compensation and restitution.

15. A conjoint reading of the abovesaid statutory provisions makes it clear that the Tribunal shall have the jurisdiction over all the civil cases, where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved, and that, the Tribunal has the power to grant relief, compensation, and restitution of property damaged. The National Green Tribunal Act, 2010 has been

enacted, based on United Nations Conference on the Human Environment held at Stockholm in June 1972, and the decision was to call upon the States to take appropriate steps for the protection and improvement of the human environment.

16. Abovesaid statement of objects and reasons, and the preamble of the National Green Tribunal Act, 2010, indicate that the Tribunal has powers to grant all matters relating to protection and improvement of human environment, which in our view, can address the averments made in paragraph 13 of the statement of facts and also order for damages to persons and property, and for matters connected therewith and incidental thereto. Even if the property is damaged, restitution can be ordered. Having regard to the objects and in exercise of the powers conferred under the National Green Tribunal Act, 2010, the Tribunal can also make preventive orders, restraining any person involved, and pass appropriate orders, for enforcement of any legal right relating to the environment.

17. In the light of the above discussion, we are of the view that the National Green Tribunal has jurisdiction to consider, as to whether the State Government have introduced any socio-economic schemes, implemented the schemes in letter and spirit, and in the event of any failure, issue appropriate directions, for implementation of the schemes and thereby, ensure that any right relating to environment is enforced.

18. At this juncture, we deem it fit to consider prayer No.2 in the writ petition, i.e., to issue a writ in the nature of mandamus or any other writ, direction, or order, commanding the respondents to return the vested forest lands covered by Exhibit-P2 notification dated 8.7.1977, and remain unassigned to the tribal community for agriculture to the forest department for conservation of forest, in the larger environmental interest. In our view, prayer No.2 is also covered by the statutory provisions, and can be exercised by the Tribunal, under Sections 15(1)(b) and (1)(c) of the National Green Tribunal Act, 2010.

19. Let us consider few decisions of the courts, on the aspect of alternate remedy: (i) In *G.J. Multiclave (India) Pvt. Ltd. v. State of Telangana and Ors.* [2017 (6) ALT 461], the High Court of Andhra Pradesh held as under:

“74. Learned Additional Advocate General would, however, contend that, since the statutory remedy of invoking the jurisdiction of the NGT was available when the writ petition was entertained by this Court under Article 226 of the Constitution of India, and as the petitioners chose to file a writ petition under Article 226 instead of availing the statutory remedy under Section 16 of the 2010 Act, the petitioners cannot take advantage of their own failure to invoke the jurisdiction of the NGT, and be heard to contend that they are now disabled from invoking the appellate jurisdiction of the NGT under Section 16 of the 2010 Act.

75. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has the discretion to

entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that, if an effective and efficacious remedy is available, it would, normally, not exercise its jurisdiction. But the existence of an alternative remedy does not operate as a bar in at least three contingencies. The extraordinary remedy under Article 226 of the Constitution of India can be invoked, despite the availability of an alternate statutory remedy, in cases where (a) the writ petitions are filed for enforcement of any of the fundamental rights, (b) where there has been a violation of the principles of natural justice, and (c) where the order or proceedings are wholly without jurisdiction (*Whirlpool Corporation v. Registrar of Trademarks* (1998) 8 SCC 1). On the ground that all the aforesaid conditions are fulfilled in the present case and, therefore, mere existence of an alternate remedy under Section 5A of the 1986 Act is not a bar for entertaining the writ petition under Article

226 of the Constitution of India, the petitioners have invoked the jurisdiction of this Court.

76. In *Bhopal Gas Peedith Mahila Udyog Sangathan (2012) 8 SCC 326 (supra)*, a three Judge bench of the Supreme Court held that, keeping in view the provisions and scheme of the 2010 Act, particularly Sections 14, 29, 30 and 38(5), it could safely be concluded that environmental issues and matters covered under Schedule - I of the NGT Act, should be instituted and litigated before the National Green Tribunal; and such approach may be necessary to avoid the likelihood of conflict of orders between the High Courts and the NGT. The Supreme Court directed that all the matters instituted, after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act, shall stand transferred and can be instituted only before NGT as this would help in rendering expeditious and specialized justice in the field of environment to all concerned. In *M/s. Bulk*

Drug Manufacturers Association v. Central Pollution Control Board, New Delhi (Order in W.P. No. 19064 of 2015 dated 30.07.2015), a Division bench of this Court held that there was a remedy of an appeal under Section 28 of the Water Act, against the impugned proceedings which was concerned with the monitoring steps on the preventive principles governed by the Air, Water and the Environment (Protection) Acts.

78. It is no doubt true that the Supreme Court, in Bhopal Gas Peedith Mahila Udyog Sangathan (2012) 8 SCC 326 (supra), has held that, in all matters falling within the ambit of the National Green Tribunal, it is only the jurisdiction of the National Green Tribunal which can be invoked; and the petitioners should not be permitted to invoke the jurisdiction of the High Court under Article 226 of the Constitution. The fact, however, remains that the power of judicial review, conferred on the High Court under Articles 226 and 227 of the Constitution of India, is part of the

basic structure of the Constitution (L. Chandra Kumar v. Union of India AIR 1997 SC 1125), and therefore such a power cannot be negated or circumscribed or obliterated even by a constitutional amendment made in exercise of the powers conferred under Article 368 of the Constitution, far less by Legislation - plenary or subordinate. The judgment in "Bhopal Gas Peedith Mahila Udyog Sangathan" can, therefore, only be understood as requiring any person, aggrieved by the order passed by the State pollution control board, to ordinarily invoke the jurisdiction of the NGT under the 2010 Act and for the High Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, to bear in mind the existence of such an alternate remedy while deciding whether or not to exercise discretion under Article 226 of the Constitution of India to entertain the Writ Petition. The observations in the aforesaid judgment cannot be understood as the statutory provisions of the

1986 Act or the 2010 Act barring exercise of the jurisdiction under Article 226 of the Constitution of India, as that would fall foul of the seven judge bench judgment of the Supreme Court in L. Chandra Kumar AIR 1997 SC 1125 (supra). As the seven Judge Bench judgment in L. Chandra Kumar AIR 1997 SC 1125 (supra) was not noticed by the three Judge Bench of the Supreme Court in Bhopal Gas PeedithMahila Udyog Sangathan (2012) 8 SCC 326 (supra), the High Court would be bound by the law declared in L. Chandra Kumar AIR 1997 SC 1125 (supra). We must, therefore, express our inability to agree with the submission of the learned Additional Advocate General, appearing on behalf of the State of Telangana, that the jurisdiction of this Court, under Article 226 of the Constitution of India, is barred because of the existence of an alternate statutory remedy under the provisions of the 1986 Act read with the provisions of the 2010 Act.”

(ii) In *Anand Gram Society Hansens Disease (Leprosy) v. Ramesh Maloi Arge and Ors.* [2019 (2) MhLJ 186], the High Court of Bombay held as under:

“21. No doubt, the power of a judicial review as conferred on the High Court under Article 226 and 227 of the Constitution is sacrosanct and remains unaffected despite an appeal being provided under section 22 of the NGT Act. The Court however would be slow to interfere except in very exceptional cases. The law in this regard is well settled. (See *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai* (1998) 8 SCC page 1 and *Union of India vs. Major General Shrikant Sharma & anr.* (2015) 6 SCC 773 and *Mahanadi Coalfields & anr. vs. Dhansar Engineering Company Private Limited* (2016) 10 SCC 571.)

23. Adverting to the above principles of law and considering the scope and ambit of section 22 of NGT Act, we are sure that this is not a extra-ordinary case where indulgence can be granted to the petitioner by

entertaining this petition under Article 226 of the Constitution. The record reveals that the petitioner had filed a civil suit for the same cause of action and could not succeed in getting any reliefs. Further, it was always open to the petitioner to approach the division bench of the NGT and seek appropriate reliefs in case the petitioner felt that the petitioner was not heard. Apart from this, a statutory remedy of an appeal under section 22 of the NGT Act was also available to the petitioner. We are therefore, certain that the petition deserves to be dismissed as an alternate remedy is available to the petitioner.”

(iii) In *Thrissur Corporation v. Kerala State Pollution Control Board and Ors.* (AIR 2020 Ker. 150), this Court held as under:

“20. The paramount contention advanced by the appellant Corporation before the writ court was that it was not provided an opportunity of being heard by the

Pollution Control Board. Writ court after considering the rival contentions of the appellant, held that the Corporation has got an alternate remedy to file an appeal against the order of the Chairman, Pollution Control Board before the National Green Tribunal.”

20. Going by the statutory provisions, we are of the view that National Green Tribunal has every jurisdiction to consider the averments, as well as the prayers sought for.

21. Though learned counsel for the petitioner made submissions on the basis of the judgment dated 07.12.2001 in W.A. No.3549 of 2001, (Exhibit P5), we are of the view that the said judgment has been rendered when the National Green Tribunal was not constituted. Now that the Tribunal is constituted by an enactment, namely National Green Tribunal Act, 2010 and the rules framed thereunder, the said judgment cannot be of any help to the petitioner, as regards the jurisdiction of this Court, exercising power under Article 226 of the Constitution of India.

22. Yet another fact to be taken note of is that in the order in O.A. No.577 of 2018 (earlier O.A. No.298 of 2014) (SZ) between Wayanad Prakrithi Samrakshana Samithi and Union of India and Others dated 30.01.2019, National Green Tribunal, Principal Bench, New Delhi, has considered the plea regarding assignment of lands to the Kerala Veterinary and Animal Sciences University, established under the Act of State Legislature, vis-a-vis, the assignment of lands to the landless tribals and to pass orders, which we have extracted in the foregoing paragraph. The grounds of challenge raised in the present writ petition is not different from the one considered by the National Green Tribunal, except, wherein land allotted to the University was for the purpose of establishing a college. Whereas perusal of the statement of facts shows that in the present case, lands are sought to be assigned/allotted for the purpose which, according to the petitioner, is tourism, a non forestry activity.

23. In the light of the abovesaid discussion, we are of the view that when the Tribunal is constituted for specific purposes, set

out in the foregoing paragraphs, petitioner can make use of the available alternate remedy to approach the Tribunal to vindicate the grievances and the prayers sought for. We dismiss the writ petition granting liberty to the petitioner to approach the Forum stated supra. Judicial notice can also be taken that the matters pending before the various High Courts have been transferred to the National Green Tribunal, South Zone Bench. Pending interlocutory applications, if any, shall stand closed.

Sd/- S. Manikumar Chief Justice

Sd/- ShajiP.Chaly Judge

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2021

With

PRAYER FOR INTERIM RELIEFS

Position of Parties

	Before the High Court	In This Court
<u>In The Matter Of:</u>		
Wayanad PrakrithiSamrakshana Samithi, Represented by Its President N Badusha, S/O Khansa, Nayketti P O, SulthanBathery, Wayanad, Kerala-673 592.	Petitioner	Petitioner
VERSUS		
1. State of Kerala Represented by The Chief Secretary to The Government, Secretariat, Thiruvananthapuram-695 001.	1 st Respondent	contesting Respondent

2 Secretary to The Government Forest Wildlife Department, Secretariat, Thiruvananthapuram-695 001.	2 nd Respondent	contesting Respondent
3. Secretary to The Government Revenue Department, Secretariat, Thiruvananthapuram-695 001.	3 rd Respondent	contesting Respondent
4 Secretary to The Government Scheduled Cast and Scheduled Tribe Development Department, Secretariat, Thiruvananthapuram-695 001.	4 th Respondent	contesting Respondent
5 Principal Chief Conservator Of Forest And Head of Forest Forces, Forest H.Q., Vazhuthacaud, Thiruvananthapuram-695 014.	5 th Respondent	contesting Respondent
6 Divisional Forest Officer South Wayanad Forest Division, Kalpetta, Wayanad-673 121.	6 th Respondent	contesting Respondent
7 District Collector Wayanad-673 121.	7 th Respondent	contesting Respondent
8 En Oru Society Represented by Its President And Sub Collector, Mananthavady, Pookot, Wayanad, Pin-673 576.	8 th Respondent	contesting Respondent

2 Secretary to The Government Forest Wildlife Department, Secretariat, Thiruvananthapuram-695 001.	2 nd Respondent	contesting Respondent
3. Secretary to The Government Revenue Department, Secretariat, Thiruvananthapuram-695 001.	3 rd Respondent	contesting Respondent
4 Secretary to The Government Scheduled Cast and Scheduled Tribe Development Department, Secretariat, Thiruvananthapuram-695 001.	4 th Respondent	contesting Respondent
5 Principal Chief Conservator Of Forest And Head of Forest Forces, Forest H.Q., Vazhuthacaud, Thiruvananthapuram-695 014.	5 th Respondent	contesting Respondent
6 Divisional Forest Officer South Wayanad Forest Division, Kalpetta, Wayanad-673 121.	6 th Respondent	contesting Respondent
7 District Collector Wayanad-673 121.	7 th Respondent	contesting Respondent
8 En Oru Society Represented by Its President And Sub Collector, Mananthavady, Pookot, Wayanad, Pin-673 576.	8 th Respondent	contesting Respondent

whether the failure on the part of the High Court to exercise its jurisdiction under Art. 226 is correct?

- C. When the issue raised by the Petitioner relates to the preservation of the Forest and non compliance of the statutory provisions of the Forest Conservation Act, 1980, whether the High Court was right in refusing to entertain the petition by relegating the petitioner to file a petition under the National Green Tribunal Act/
- D. Whether the High Court after noticing that the National Green Tribunal (Principal Bench) has decided the issue in respect of the very same land, was right in directing the petitioner to approach the National Green Tribunal?
- E. Whether the High Court is right in relegating the petitioner to National Green Tribunal for seeking directions to protect the rights of scheduled tribe and traditional forest dwellers, who could not approach the High Court, in view of the judgment of this Hon'ble Court in T.N Pollution Control Board Vs. Sterlite Industries (I) Ltd.?

3. DECLARATION IN TERMS OF RULE 3 (2);

The petitioner states that no other petition seeking special leave to appeal has been filed by him against the impugned order.

4. DECLARATION IN TERMS OF RULE 5.

Annexures P1 to P14 produced along with the Special Leave Petition are true copies of the pleadings documents which formed part of the records of the case in the Court appeal against whose order the leave to appeal is sought for in this petition.

5. GROUND:

Leave to appeal is sought for on the following grounds, which are taken without prejudice one and other:

- (a) BECAUSE the impugned final judgments and orders of the High Court is incorrect in law and contrary to the facts and circumstance of the case.

- (b) Because the High Court erred in relegating the petitioner to move the National Green Tribunal, after holding that there was no bar to the High Court considering the matter.
- (c) Because an appeal involving identical issues are pending before this Hon'ble Court, from an order of the National Green tribunal, New Delhi, and as such it would be futile for the petitioner to move the Green Tribunal.
- (d) Because the State Government is constitutionally bound to obtain prior permission from the Central Government, before making any diversion of forest land for non-forestry purpose. Once the Central Government grants permission for a particular purpose, the State Government cannot use the said land for any other purpose without obtaining fresh permission from the Central Government.
- (e). BECAUSE by unilaterally changing the approval granted for diversion of forest land under from rehabilitating the tribal community to tourism activity makes mockery of the Forest (Conservation) Act, 1980 and thereby undermining sanctity the said Act.

- (f). BECAUSE in the instant case the Forest Conservation permission was granted for the use of the forest land for distribution amongst tribals for agriculture. On this ground alone the State Government was approached this Hon'ble Court seeking exemption from payment of NPV (Net Present Value). Therefor the change in land use unilaterally by the State Government is illegal.
- (g). BECAUSE the approval under the Forest (Conservation) Act, 1980 might have been refused for a non site specific activity such as building colleges, etc. in a pristine and eco-sensitive Western Ghats region if such an application was made under the said Act.
- (h). BECAUSE Tourism is a non-forestry activity and any such activity in the land covered by Ext. P2 require prior approval under Section 2 of the Forest (Conservation) Act, 1980. Therefore, the activities now carried on by the 8th respondent in the forest land covered by Ext. P2 are illegal and is liable to be interdicted.
- (i). BECAUSE protection and improvement of environment and safe guarding of forest is a directive principle of State policy. Further, the respondent cannot carry on any non forestry activity in the forest land without

complying payment of NPV and prior approval under Section 2 of the Forest (Conservation) Act, 1980. The land in the possession of the 8th respondent is a reserve forest and no non forestry project can go on without complying with the provisions of law. Therefore, the tourism activity, which would have adverse effect on forest is liable to be interdicted.

- (j). BECAUSE it is submitted that the tribal community are the most vulnerable people and the projects are commenced in their name, spending large amounts. However, the tribal communities are not benefitted and only the middle men are benefitted. Various projects commenced and left not functioning. Tribal empowerment is not forthcoming. As can be seen from Exts. P7, P8 and P9, payment of NPV was exempted on the ground that the forest land would be assigned to the landless tribals under the provisions of Land Reforms Act. Since, the tribal community people cannot approach this Hon'ble Court, it is just and necessary to appoint a Commission to enquire and file a comprehensive report on the different schemes intended for socio-economic improvement of tribal communities at

Wayanad district, the outcome of such schemes and also suggest remedial programmes.

- (k). BECAUSE the petitioner had pointed out the violations in Ext. P10 representation; however, no action is taken by the 9th respondent. It is necessary that directions may be issued to the 9th respondent to prosecute all those who are responsible for allowing non forestry activity in the land covered by Ext. P2 Notification.
- (l). BECAUSE the private forests vested under Ext. P2 Notification was intended to be assigned to the landless tribal people for agricultural purposes. Such lands cannot be allowed to be used for non agricultural and non forestry purposes. It is clearly illegal and is also against the undertaking made before the Hon'ble Supreme Court as evidenced by Ext. P7 Order. Hence, it is prayed in the larger environmental interest that a direction may be issued to return the vested forest lands covered by Ext. P2 Notification and remain unassigned to the tribal community for agriculture be returned to the forest department for conservation of forest.

6. GROUNDS FOR INTERIM RELIEFS

- i) That the diversion of forest land for non forest activity without prior permission from the Central Government under the Forest Conservation Act, is illegal. The Respondents cannot be allowed to go on with the illegal activity during the pendency of the petition before this Hon'ble Court. The State cannot permit the change in the status of the land in violation of the Forest conservation Act, 1980.

7. MAIN PRAYER

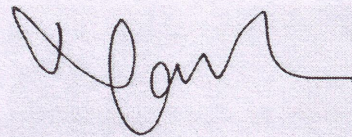
It is respectfully prayed that this Hon'ble Court may be graciously pleased to grant Special Leave to Appeal from and against the final Judgment and Order of the High Court of Kerala at Ernakulam dated 22.02.2021 in WP(C).No.3884 OF 2021(S),.

8. PRAYER FOR INTERIM RELIEF

The petitioner therefore most respectfully prays that this Hon'ble Court may be graciously pleased to:

- i). Pass ad-interim ex-parte order staying all construction activities in the forest land of 531.1675 Hectares in New Survey No. 172 in Block No. 25 of the Kunnathidavaka village, Kozhikode District as mentioned in Annexure P-1 and P-2, without obtaining prior approval of the Central Government under the Forest (Conservation) Act, 1980.
- ii). Pass such other and further orders.

Drawn and Filed By



Drawn on 04.08.2021

P.K. MANOHAR

Advocate for the Petitioner (513)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2020

IN THE MATTER OF:

Wayanad Prakrithi Samrakshana Samithi ... Petitioner

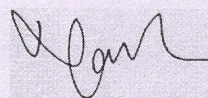
Versus

State Of Kerala &Ors. ...Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the Petition or to make out grounds urged in the Special Leave petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the SLP.

FILED BY:



Filed on: 04.08.2021.

P.K. MANOHAR

Advocate for the Petitioners

(3) I say that the Annexures P-1 to P- 14 to the Special leave Petition are true and correct copies of their respective originals.

Dated this the 30th day of July, 2021.

Deponent

VERIFICATION

I the above named Deponent do hereby solemnly affirm and state that the contents of the above affidavit at paras 1 to 3 are true and correct to the best of my knowledge and nothing material has been suppressed therefrom.

Verified on 30th day of July, 2021

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me, on this the 30th day of July, 2021, in my office, at Wayanad

Sd/

Advocate. M.K. Sudhish K/268-B/91,

Sulthan Bathery

APPENDIX I

FOREST (CONSERVATION) ACT, 1980

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

Be it enacted by Parliament in the Thirty-first Year of the Republic of India as follows:-

1. Short title, extent and commencement. (

(1) This Act may be called the Forest (Conservation) Act, 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 25th day of October, 1980.

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- (b) any purpose other than reafforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless

communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

3. Constitution of Advisory Committee. The Central Government may constitute a Committee consisting of such number of persons as h may deem fit to advise that Government with regard to- (i) the grant of approval. under Section 2; and (ii) any other matter connected with the conservation of forests which may be referred to h by the Central Government.

3A. Penalty for contravention of the provisions of the Act. Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

3B. Offences by the Authorities and Government Departments.

(1) Where any offence under this Act has been committed –

(a) by any department of Government, the head of the department;
or

(b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority; shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided

that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of; or is attributable to any neglect on the part of any officer, other than the head of the department, or in the case of an authority, any person other than the persons referred to in clause (b) of subsection (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. Power to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

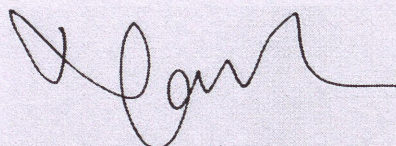
(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions

aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

5. Repeal and saving.

(1) The Forest (Conservation) Ordinance, 1980 is hereby replaced.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

A handwritten signature in black ink, appearing to be 'J. G. ...', is written over a faint rectangular stamp.

//True copy//