

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.28/2014**

CORAM :

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

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

B E T W E E N:

SAIPRASAD MANGESH KALYANKAR,

Age 50 years, Occupation- Chartered
Accountant, Residing At & Post Banda,
Tal.Sawantwadi, Dist.Sindhudurg,
Pin - 416511, Maharashtra.

....APPLICANT

A N D

- 1. THE REGIONAL TRANSPORT OFFICER (R.T.O.),**
Sindhudurg, Sindhudurnagari, Oros,
Tal.Kudal, Dist.Sindhudurg,
- 2. THE REGIONAL FOREST OFFICER**
(Vanshetrapal), Sawantwadi,
Tal.Sawantwadi,
Dist.Sindhudurg, 416510.
- 3. THE SUB DIVISIONAL OFFICER (REVENUE)**
Sawantwadi, Tal.Sawantwadi,
Dist.Sindhudurg,- 416510.

4. MAHARASHTRA POLLUTION CONTROL BOARD

Through its Member Secretary
Kalpataru Building, Sion, Mumbai-22.

5. THE CHIEF CONTROLLER OF MINES,

Indian Bureau of Mines,
Nagpur 440001.

6. UNION OF INDIA THROUGH THE SECRETARY

Ministry of Environment and Forest
Paryavaran Bhavan, Lodi Road,
New Delhi.

7. CENTRAL POLLUTION CONTROL BOARD,

Parivesh Bhavan, CBD-Cum Office Complex,
East Arjun Nagar,
Delhi-110032, India.

8. MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD.,

Having its address at Nepean Sea Road,
Priyandarshini Park, Mumbai-400 036.

.....RESPONDENTS

Counsel for Applicant(s):

In person

Counsel for Respondent(s):

Madhuri Kharat, Advocate for Respondent No.1.

Mr. D.M.Guptea/wSupriya Dangare Advocates for Respondent No.4.

Fawia M. Mesquita holding for Mahesh Amonkar Advocate for Respondent No.5.

Mr.A.B.Avhad Advocate a/wSaurabh Kulkarni Advocate, for Respondent No.7.

Mr. Saket Mone, Advocates, Tejaswini Bhakare Advocate i/b Vidhi Partners for Respondent No.8.

J U D G M E N T

1. By this Application, Applicant – SaiprasadKalyankar, seeks following directions:

- a. To grant the application.
- b. To have a criminal prosecution for all officers who are collusion in this project so that they can make money from illegal mining.
- c. May pass an order issuing directions to the R.T.O. Sindhudurg, Oros, Tal. Kudal , Dist.Sindhudurg to not to do any further activity in the said land i.e. cutting of remaining trees, levelling of the land, mining of major or minor mineral in any part of total area H.R. 11-95-50.
- d. Pass an order directing the Divisional Forest Officer, Sawantwadi not to give any further permission for cutting of any trees, to make survey of the felling of trees, to have departmental action.
- e. Pass an order direction issuing to the Maharashtra Government Irrigation Department not to delete the land from notified irrigated command area.
- f. Pass an order directing the Respondents to take immediate remedial and effective measures to replant all the trees as in 7/12extracts in entire land and effective measures for restoration of entire ecology of the said area.
- g. Pass an order of directing stringent action to be taken against officers of forest department, Sawantwadi and officers of R.T.O. Sindhudurg and his contractors for dereliction of duty .
- h. To pass appropriate orders imposing fine and cost of restoration of the ecology of land under tree plantation.
- i. The applicant craves leave to raise additional pleas and or additional grounds at an appropriate stage and also craves leave of this Hon'ble Tribunal to refer to and rely upon and or to file therelevant and necessary documents at the time of hearing of the instant application if necessary
- j. Pending hearing and final disposal of this Application.
I .To cancel all permissions from environment/ forest Dept. for project.

ii. To pass order issuing directions to the Regional Transport Officer (R.T.O.) Sindhudurg, Kudal, Dist.Sindhudurg to stop any further activity of cutting of trees, levelling of mountain, digging of soil, breaking of land, and mining of major / minor minerals in the land.

iii. To pass an order issuing direction to the Vankshetrapal (RFO), Sawantwadi not to give any permission for tree cutting and to make survey of illegal tree cutting.

i. To pass any other relief and further reliefs as the circumstances of the case may require.

2. The Application is purportedly filed under Sections 14, 15 and 18 of the National Green Tribunal Act, 2010. For sake of convenience the Applicant will be referred to hereinafter by his name i.e. "SaiprasadKalyankar". He is Chartered Accountant by profession. He claims to be interested in protection of environment.

3. Before we proceed to go to the pleadings of SaiprasadKalyankar, it will be appropriate to understand the conspectus of a common project undertaken by Govt. of Maharashtra vide its Resolution dated March 25th, 2008, which provides for modernization and computerization of 30 check posts. This Govt. Resolution (G.R) refers to modernization of 22 border check posts in the State of Maharashtra of the transport department as per classification made according to the traffic flow at each of the check post. Under the said GR, the Maharashtra State Road Development Corporation (MSRDC) was authorized to change location of existing border check posts. A joint survey was conducted by the Experts of MSRDC along with the Transport and State

Excise department officers and a proposal for setting of check posts at suitable locations near Goa border, was submitted to the competent authority. Thereafter by Govt. Resolution dated July 9th, 2008, process for acquisition of lands for modernization and setting up of 22 check posts was set in motion. One of such check post existing earlier at the location of village Insuli, was decided to be shifted to village Banda. Certain lands were decided to be acquired for such purpose, including land Survey No.195(New Survey No.189-C),,Hissa No.5, of village Banda, of which SaiprasadKalyankar was the owner. He challenged acquisition of that land by filing Writ Petition No.133 of 2011 in the Hon'ble High Court of Judicature at Bombay. He also challenged Govt. decision to shift location of Insuli check post to Banda. The Hon'ble Division Bench by order dated 5th April, 2013, dismissed said Writ Petition No.133 of 2011 along with similar Writ Petition No.4961 of 2012. Thus, acquisition of land Survey No.195(New Survey No.189-C), as well as Govt. decision to modernize and establish the check post at Banda, was permitted due to such decision as well as in view of the order passed in PIL No.147 of 2009.

4. This background is set out in the light of averments made in the Application to the effect that the land bearing Survey No.195(New Survey No.189-C),Hissa No.5, is wet land, forest land and being used for illegal mining. SaiprasadKalyankar alleges that he is aggrieved by the illegal

acts of the Respondents due to felling of trees, illegal mining and degradation of environment in the area, particularly, on account of modernization project at Banda check post.

5. According to SaiprasadKalyankar, the Respondent No.1 Road Transport Officer (RTO), acquired land Survey No.195(New Survey No.189-C), at Satwadi/Banda through which a culvert (Nalla) flows. This land is covered under the irrigation command ofTillari canal of Banda Up-kalava. The land is having tree cover of forest trees, fruit trees etc. comprising of about 4400 trees. The said land has immense stock of iron ore Fe_2O_3 , which is a major mineral. Any development in the area of said land, including “winning” will amount to ‘mining activity’ and therefore, the same cannot be undertaken without prior Environmental Clearance (EC) of the MoEF. In spite of such legal requirement and though the land Survey No.189 that comprises of 11Ha, 95.5R, no EC is obtained by the Respondent No.1 for the project activity. The project work cannot be permitted in view of the fact that such mining activity is of major nature and even for mandatory permission of the Irrigation Department for delineation of the area from the irrigation command area, has not been taken from competent Authority. Modernization of Banda post is being proceeded with by the MSRDC in utter disregard to the legal requirements.

6. SaiprasadKalyankar has come out with a case that the MoEF has restricted the mining and construction work in

Ecologically Sensitive Area (ESA), and that village Banda is declared by the Govt. of Maharashtra and MoEF as part of such area. Obviously, mining activity, even though, it may be undertaken by the Government Agency in Eco Sensitive area, is impermissible under the Law. He alleges that modernization and installation of Banda check post will cause soil erosion, water logging and immense ecological imbalance in the area. He further alleges that large number of huge trees are already felled/cut down and it is expected that 7400 trees would be sacrificed for completion of the project in question. Thus, according to SaiprasadKalyankar, the project tantamount to denuding of forest area.

7. SaiprasadKalyankar further alleges that modernization and construction of Banda check post involves activity of construction, which in fact, a new project and falls in Schedule-I, of the EIA Notification issued by the MoEF. The construction work area comprises of more than 20000 Sq. mtrs area in HR-11-95-55 and cannot be undertaken without grant of EC by the MoEF. The Respondent No.1, has not followed due procedure of scoping public consultation, environmental impact assessment and appraisal, which are steps to be followed before decision making, prior to grant of EC. Nor any Application is submitted by the Respondent No.1 to the MoEF in the Form -I, to seek EC of the MoEF (competent Authority), though the project is for construction of levelling of 32 acres of land, as well as, within eco-sensitive

area. The project is near the National Highway No.17, which requires due permission of the National Highway Authority (NHA). Such permission is also not taken before the commencement of the project. The Respondent No.1 has not taken permission for forest clearance (FC) from the competent Authority. Widening of road at the site comprises of 9 lanes, on both the sides, including construction of Godown, Medical Shops, STD Booth, automobile repairing workshop, commercial shops etc. and as such the construction will be of more than 20000 sq. mtrs. It is obvious that the structure is construction activity that falls under Entry No.18 1(a) of EIA Notification dated 14th September, 2006 and therefore, without EC issued by the competent Authority, the work cannot be undertaken. The loss of natural tree cover, loss of minerals, loss of available natural resources, would cause an irreparable damage to the environment and ecology of the area, due to implementation of the proposed project activities of the Respondent No.1, namely, road widening, modernization and establishment of check post at Banda (TalukaSawantwadi). Hence the Application.

8. Respondent No.1 (RTO), resisted the Application vide affidavit and thereby resisted the Application. Respondent No.1, alleges that the Application is barred by limitation, inasmuch as the land of the Applicant and other adjoining lands were decided to be acquired on 25th March, 2008, for the project in question. The 'cause of action' thus, triggered

on 25th March, 2008 itself. The Application ought to have been filed within a period of six (6) months thereafter. Another limb of contention raised by the Respondent No.1, is that Public Interest Litigation (PIL) No.147 of 2009 along with Civil Application No.159 of 2009, filed in the Hon'ble High Court of Judicature at Bombay, came to be dismissed and therefore, the project in respect of construction, shifting of the check post from Insuli to Banda and modernization thereof, cannot be challenged by SaiprasadKalyankar, inasmuch as, he was party to the earlier round of litigation. It is further pointed out that SaiprasadKalyankar had filed yet another Writ Petition along with one ShivaramDhondugadkari, bearing Writ Petition No.133 of 2011 and Writ Petition No.4961 of 2012, in the Hon'ble High Court of Judicature at Bombay. He had challenged the construction work of check post at Banda check post on the ground that part of acquired land falls in the command area and therefore, acquisition of land for modernization of the border check post at village Banda, was illegal. Those Writ Petitions were dismissed by the Hon'ble High Court, therefore, the same issue cannot be re-agitated by him in the present Application. In other words, the Respondent No.1, alleges that such an issue cannot be gone into because the inquiry is barred by the principle of '*Res-judicata*'.

9. According to the Respondent No.1, SaiprasadKalyankar was awarded due compensation as per

the market value, when his land Survey No.195(New Survey No.189-C), was acquired for the purpose of project in question. It is further averred that the main purpose of project is to modernize 22 check posts of the transport department and it has no nexus with any mining activity. It is contended that the earth which will be removed from the area in question will be dumped at the same place for the purpose of closing the pits and that no extraction of ore will be undertaken by the Respondent No.1, nor any mining activity will be done or sale of minerals will be effected. Therefore, the work in question cannot be branded as mining project. The Respondent No.1, further states that MSRDC is appointed as 'Project Implementing Agency' by Government Resolution to modernize the check posts. The service provider will provide Electronic Weigh Bridges, Automatic Vehicle Counters and classifiers, License Plate Readers, Radio Frequency Identification Tags (RFID), Computers, Local Air Network (LAN) and connectivity to Central Control Room at Mumbai (VAN) etc. There are several other facilities, which will give excellent service to the end users. According to the Respondent No.1, though Banda is notified as Environmentally Sensitive Area (ESA), by Notification issued on 13.11.2003, by the MoEF, yet the project in question was approved by the Govt. of Maharashtra much prior to issuance of the said Notification i.e. as per Govt. Resolution dated 25th March, 2008. Accordingly, part of the project work of border

check posts of six (6) of such posts is completed and they are fully operational and other check posts are also under construction except the present check post at Banda. It is stated that due to continuous and various kind of litigations initiated by SaiprasadKalyankar, the construction work of check post at Banda is impeded and delayed, which has resulted into huge loss to the Motor Vehicle Department, Sale-Tax Department, State Excise Department and the Forest Department. According to the Respondent No.1, construction area of the project is only 14043 sq.mtrs, which is much below the outer limits of 20000 sq. mtrs and therefore, Notification issued by the MoEF, on 13.11.2013, is not applicable to modernization project in question. It is further contended that the competent Forest Officer has issued due permission for cutting 1279 scheduled trees, as per office order No.56/2013-14, dated 23.12.2013 and permission is also changed on 27.3.2014. The Village Panchayat Banda has also issued No Objection Certificate (NOC) dated 2.12.2013, in this context. The Director of Miners and Geology, Maharashtra has issued letter dated 23.9.2010, whereby NOC is issued to allow winning/removal of minerals from the land on payment of royalty of Rs.58,80,000/-. The Respondent No.1 alleges that the said amount has already been paid. It is contended that 3-Anjan and 2- Chandan trees were inadvertently felled during the process of tree cutting and for such error, fine of Rs.6000/- was imposed by the

Range Forest Officer, which was paid by the concerned contractor. So also, it is submitted that a separate Application has been submitted on 18th January, 2011 to the Principal Secretary, Irrigation (Command Area Development) for delineation of part of command area of Tillari Canal that falls in the project area. It is denied that the project will result into ecological loss, loss of forest cover and soil erosion. It is further submitted that the Application is ill-motivated and liable to be dismissed.

10. At this juncture, it may be noted that though the Application was only against seven (7) Respondents, yet subsequently, MSRDC, came forward with a request to allow its impleadment as a party. The MSRDC, in fact, is the project implementing agency. What happened before impleadment of MSRDC is rather significant that may be taken into account.

11. What appears from the record is that the Range Forest Officer (RFO), Sawantwadi filed an affidavit dated 21st May, 2014, wherein RFO Shri. Sanjay Bhausahab Patil, categorically stated that permission under Section 3 of the Maharashtra Felling of Trees (Regulation) Act, 1964, was granted by him. His affidavit indicated that 1279 trees were permitted to be cut down as per the permission. However, he vaguely stated that the permission of felling of trees was given after ensuring that there are more than 53 trees per Hectare present at the place. Moreover, he vaguely stated that action

was taken against illegal felling of trees by the Tree Officer of Sawantwadi, as required under Section 4 of the Maharashtra Felling of Trees (Regulation) Act, 1964. This affidavit did not show as to how many trees were illegally felled, details of species of the trees, which were proposed to be cut down and whether the area was forest area or that it was non-forest area. This Tribunal passed order dated May 21st, 2014, directing the RFO to file detailed affidavit. Intervention Application filed by the MSRDC was permitted on the same day and MSRDC was thus, added as a party – Respondent No.8, on May 21st, 2014. It may be noted that the MSRDC came before this Tribunal with a request that it shall be added, because it has key role to play being Implementing Agency.

12. We may take note of the fact that the record clearly shows that there was illegal cutting of 5429 trees by the contractor, namely, the Maharashtra Border Check Post Network Limited (MBCPNL) to whom the MSRDC had assigned the project work prior to impleadment of the MSRDC. We, therefore, directed MSRDC to file reply affidavit giving all details and particularly indicating the action taken against the said contractor.

13. Before we proceed further, it would be appropriate to reproduce the relevant part of the Order dated May, 21st, 2014, so as to comprehend as to how the MSRDC, came into picture, on its own and what this Tribunal expected the

MSRDC to do. As stated before, by Order dated 24th February, 2014, we directed first seven (7), Respondents to maintain *status quo* in respect of illegal mining or illegal cutting of any more trees in the area of the land in question until next date. We further had clarified that *status quo* was restricted to the standing trees but had nothing to do with clearance of drains or for water discharge outlets. Against this order, the Respondent Nos. 1 to 7, had never made any grievance. Neither of them applied for vacating of the *status quo* order.

14. The text of relevant portion of the order dated May, 21st May, 2014, may be reproduced for ready reference:

“It is stated that MSRDC is a necessary party, because MSRDC is the Project Implementing Agency and therefore has key-role to play. It appears that MSRDC gave project work to the Maharashtra Border Check post Network Ltd. The director of MSRDC shall file affidavit reply as to what action was taken against the Maharashtra Border Check post Network Ltd for the alleged illegal cutting of 5429 trees and whether said contractor was removed from the work and whether the contractor was black listed immediately or whether activity of such cutting of the trees itself was permissible one.”

15. It appears that another affidavit by Shri. Shirish Kulkarni, Assistant Conservator of Forests (ACF), Sawantwadi, is filed. His affidavit shows that the area shown in the Application filed by Saiprasad Kalyankar is not a notified forest area, nor it has been identified as ‘forest’ area. It is further stated that the area in question is not categorized as of any type of ‘forest’ whatsoever. Thus, some error which had crept in the earlier statement in the affidavit filed by RFO

Shri. Sanjay BhausahebPatil, was rectified on the basis of available record.

16. By filing reply affidavit of NageshLohalkar, Sub-regional officer of MPCB, (Respondent No.4), only a status report was submitted. It is stated that on basis of a complaint filed by SaiprasadKalyankar site was visited. The complaint was forwarded to the Respondent No.1. The MPCB observed that no mining activity was being carried out, or any proposal for EC for mining in the area was received. It is stated that by order dated 27.2.2012, the Hon'ble Supreme Court of India, directed all the mines for major minerals to obtain prior EC from the competent Authority, irrespective of the mining area covered thereunder. The report further shows that the development of the site by cutting of the trees, land levelling, lying of 'Kaccha' road, flanking along the National Highway No.17, was noticed. It appears that the MoEF issued directions vide letter dated 13.11.2013, which includes village Banda (talukaSawantwadi, district Sindhudurg), as one of the area under eco-sensitive zone (ESZ). Therefore, any mining activity in the said area, building activity and construction project of 20000 sq. mtrs and above would require prior (EC) and moreover such mining activity is impermissible.

17. The Central Pollution Control Board (CPCB) – Respondent No.7, has come out with a case that it has no role in the matter. According to the CPCB, the CPCB has not issued any Consent/NOC/EC to the project in question. Nor it

has any control over the consent mechanism in context of such a project for modernization, particularly, involving computerization of the border check posts.

18. According to the Respondent No.5, since there is no mining operation in any land in question, it is not the business of the Chief Controller of Mining to look into the work of modernization and construction of the Border Check Posts. It is submitted that there is no prayer in the Application against the Respondent No.5, and therefore, the Respondent No.5, may be deleted from the array of the Respondents. Further, it is stated that the Respondent No.5, through its representatives got inspected site in question and found that no mining operation was going on at the site and therefore, the averment is misconceived. It is the case of the Respondent No.5 that unless the area is proved to be one where mining lease is granted in terms of Rule 22 of Mineral Concession Rules, 1960 by the State Govt. then only provisions of MCDR, 1988, would come into effect. So, it is denied that the Respondent No.1, indulged any mining activity at the site.

19. By filing elaborate response – reply affidavit, the MSRDC (Executing Agency), resisted the Application on various grounds. On behalf of MSRDC, Shri. Santosh Kumar, Joint Managing Director, sworn in his affidavit to support the averments in order to counter the Application. His affidavit purports to show that he filed his affidavit only for limited

purpose of opposing interim relief. His affidavit, however, is quite elaborate in context of the contractual work assigned to the MSRDC. The MSRDC challenges maintainability of the Application on the ground that the Application is barred by Limitation, since the impugned decision to shift the check post from Insuli to Banda, was taken on or about 17th June, 2008, and thereafter a public notice for acquisition of lands was issued on 28th February, 2009, and as such the Application filed after period of six (6) months, is barred under Section 14(3) of the National Green Tribunal Act, 2010. It is further stated that dismissal of PIL No.147 of 2009, along with Civil Application No.159 of 2010 by the Hon'ble High Court of Bombay, would bar filing of the present Application, inasmuch as the principle of '*Res-judicata*' is applicable in the facts and circumstances of the present case. It is pointed out that in Writ Petition No.133 of 2011 and in Writ Petition No.4961 of 2012, the Hon'ble High Court of Bombay, held that "questions regarding objections pertaining to mines and minerals cannot be gone into". According to MSRDC, the Application is filed with ill-motive of forum hunting. It is stated that this Tribunal should not have passed ad-interim order against the MSRDC, which caused impediment in going ahead with the public project. According to MSRDC, by Notification dated 25th March, 2008, the Govt. of Maharashtra decided to carry out modernization and computerization of thirty (30) border check posts, out of which twenty two (22)

border check posts of the Transport Department were to be modernized and eight (8) enquiry border check posts of the State Excise Department, were to be installed by acquisition of lands, near the boundaries of State of Gujarat, Andhra Pradesh, Karnataka and Madhya Pradesh. These modern check posts were to be inter-connected with each other and with Central Control Room in Mumbai, via internet work. The MSRDC started the work and completed part of project at various locations on Built, Operate and Transfer (BOT) basis. The site of Banda was handed over to concessional (Contractor) M/s Sadbhav Engineering Ltd on or about 23rd December, 2013. It is reiterated that the project in question requires 14043 sqmtrs land, which is much below the limit of 20000 sq.mtrs and therefore, does not require EC, as per the directions of MoEF in its communication dated 13th November, 2013. It is further reiterated that the Government Notification dated 13th November, 2013, is not applicable to the project, because the project was approved five (5) years before such directions were issued. According to MSRDC, the Range Forest Officer (RFO), Sawantwadi, is the competent Authority under the Maharashtra Tree Cutting (Amendment) Act,1988, and lawfully granted permission to cut 1279, scheduled trees. Therefore, felling of such trees was lawfully done. It is contended that no permission is required for cutting of non-scheduled trees and therefore, non-scheduled trees have been cut, as required at the project site. The

MSRDC came forward with a plea that royalty of Rs.58,80,000/- (Rupees Fifty Eight Lakhs and Eighty Thousands) was assessed by the Director of Mining, while granting NOC, which has been credited to the Government account. It is pointed out that the Collector, Sindhudurg, vide communication dated 28th March,2014, informed that the project in question, does not come under the provision of Section 25(2) of the Maharashtra Land Revenue Code,1966, and hence, permission is not required for the same. The project in question is, therefore, being implemented within legal parameters and only purpose of SaiprasadKalyankar, is to create hurdles, because of the fact that the land Survey No.195(New Survey No.189-C),is subjected to acquisition for implementation of said project. Consequently, MSRDC, sought dismissal of the Application.

20. We have heard Applicant SaiprasadKalyankar in person and learned Counsel for contesting Respondents in *extenso*. We have also perused the written submissions filed by SaiprasadKalyankar and on behalf of MSRDC. Undisputedly, agricultural land Survey No.195(New Survey No.189-C), situated at Banda, was acquired for modernization and installation of inter-state transport check post. There is no dispute about the fact that the check post is proposed at location of Highway No.17, near Maharashtra-Goa border. There is also no dispute about the fact that by Govt. Resolution, dated 23rd March, 2008, twenty two (22) such

check pots were decided to be computerized and interconnected by LAN/WAN, and modernized by providing updated facilities. The agricultural land of SaiprasadKalyankar was acquired for such purpose amongst the lands of other land owners. He challenged acquisition of his land by filing Writ Petition No.133 of 2011. The Hon'ble High Court of Bombay dismissed that Writ Petition. The Hon'ble High Court of Bombay, held that "the objection to the decision of shifting of check post from Insuli to Banda, cannot be entertained". Obviously, the issue regarding shifting of the check post, acquisition of land, impact of such process and other allied questions, are not required to be considered in the present Application. It may be emphasized that only 'substantial question relating to environment' may be entertained, so as to settle the dispute raised vide the present Application.

21. Considering the nature of dispute raised by SaiprasadKalyankar, we deem it proper to frame following issues for determination:

- i) Whether the Application is barred by Limitation?
- ii) Whether during course of execution of project in question, the forest cover is illegally removed by felling of trees without obtaining legal permission, or that the project is being implemented without obtaining prior Forest Clearance (FC), from the Competent Authority

and thus, any illegality has been committed by the Respondent Nos.1,2 and 7?

iii) Whether implementation of the project in question amounts to illegal mining activity and particularly, without obtaining Environmental Clearance (EC), which is absolutely impermissible in the Eco-Sensitive Area (ESA) of 'Western Ghats' because of the Notification dated 13th November, 2013, of the MoEF, declaring ESA, in which Banda village is included?

iv) Whether the project requires prior Environmental Clearance (EC), in accordance with the EIA Notification dated 14th September, 2006, or any other EIA Notification issued by the MoEF and for want of such EC, implementation thereof without following due procedure, is bad in Law?

v) a) Whether part of the project land falls in Command Area of notified Irrigation Project and therefore, proposed work cannot be undertaken without prior permission of the Competent Authority, unless the area is delineated from Command Area?

b) whether otherwise the project suffers from any kind of illegality, and is liable to be struck down?

Re: Issue (i)

22. So far as question of limitation is concerned, it may be stated that the project activity was approved vide Govt. Resolution dated 25th March, 2008. Still, however, that cannot be the first date of 'cause of action' in the context of present Application. The Application is for restitution of environment as well as, for the purpose of settlement of 'such disputes' related to implementation of 'the Environment (Protection) Act, 1986'. On merits, whether the Application would fail or will be granted, is another thing, but when it *prima facie* appears that a large number of trees have been felled without prior approval of the competent authority and moreover, there is probability of extraction of major mineral in the area, it will have to be said that the Application projects 'substantial environmental dispute' relating to implementation of the Environment (Protection) Act, 1986. In our opinion, therefore, the Application falls within ambit of Sections 14(1) (2), 15 and 18 of the National Green Tribunal Act, 2010. The Applicant has spent good deal of time in the Hon'ble High Court and probably with bonafide intent to save the land from acquisition proceedings. He also

ventilated grievance before the Hon'ble High Court that the lands fall within Irrigation Command Area and therefore, the project should not be undertaken at Banda. He challenged shifting of the check post from Insuli to Banda. His Writ Petitions were dismissed. The time consumed in such a litigation, will have to be considered for the purpose of pinpointing commencement of the relevant period, inasmuch as the 'cause of action' is a bundle of facts. We may point out that the present Application was filed in this Tribunal on 17th February, 2014, alleging that felling of trees by the RTO (Respondent No.1) in land bearing new Survey No.189-C, is illegal. SaiprasadKalyankar asserted that RFO, Sawantwadi (Respondent No.2) granted illegal permission for cutting/felling of trees on 23.12.2013. Thus, from such a date, the Application can be said to be within period of limitation, inasmuch as actual work of felling of trees had commenced thereafter. A copy of permission granted under Section 3(1) (b) of the Maharashtra Cutting of Trees (Amendment) Act, 1988 (Ex-D-28) dated 23.12.2013, is placed on record. In our opinion, illegal felling of trees has triggered limitation in this case and hence the Application is within prescribed period of Limitation.

Re: Issue (i)

23. There cannot be duality of opinion that illegal deforestation would seriously impair environment and

ecology. At the same time, up-gradation of available facilities is also need of the hour. Felling of trees in the area is no doubt, incidental part of the execution activity required for execution of the project in question. Perusal of the record shows that in pursuance to the Application dated 15.1.2013, received from the RTO, Sindhudurg, requesting for permission to fell down scheduled trees, standing in Survey No.189-C, for the purpose of modernization of border check post, the RFO gave permission for cutting down 1279 trees of the forest species. What appears from the record is that though such trees were allowed to be fell down from the land Survey No.189-C, yet that land was not declared as 'private forest' nor it was part of 'Govt. forest'. It is important to note that the order issued under Section 3(1) (b) Maharashtra Felling of Trees (Amendment) Act 1988, reveals that the agricultural land Survey No.189-C, is situated outside the 25 villages proposed to be included in Eco-Sensitive Area (ESA), under the report of Gadgil Committee, nor that land was notified as ESA in Sindhurung district. Thus, the land of Applicant, namely, RTO, bearing Survey No.189-C, was not included in ESA at the relevant time. Having regard to the public purpose for which the permission was sought, such permission was granted by the Forest Officer on payment of royalty and also on condition that replantation of the same trees. The permission granted was in view of

the MoEF Notification dated 13th November, 2013. It is pertinent to note that such permission was issued on 23.12.2013, i.e. after declaration of ESA, by the MoEF/Govt. of Maharashtra, for the project which was commissioned in 2008.

24. What appears from the record is that a Show-cause-Notice was served on Shri. ManojAbrol, site In-charge of the contractor, when it was found that additional 5429 trees were cut down without permission. His explanation was sought by the RFO, Sawantwadi. Instead of taking further action, the RFO, gave report to the Tehasildar, Sawantwadi, by communication dated 20th January, 2014, that suitable action may be taken against said ManojAbrol, because entire area was cleared of all the trees and offence was committed under Section 25 of the Forest Act. Thus, it is conspicuous that the RFO as well as Tehasildar, abdicated their legal responsibility of taking suitable action against the culprit/offender or wrong doer, though the information clearly showed that the area was cleared by the Agency or site in-charge appointed by the Agency, appointed by MSRDC to execute the work in question. SaiprasadKalyankar made complaints to the Collector and other Authorities. His complaints were forwarded by one office to another. There was only shifting of papers from one office to another, perhaps to avoid responsibility. The fact remains, however, that land Survey No.189-C, was

cleared of the trees by the contractor, who was appointed on behalf of Executing Agency nominated by the MSRDC. It is worthwhile to note that land Survey No.189-C, of village Banda was mutated in the name of Sub-Divisional Transport Officer, Sindhudurg, vide Mutation Entry No.1793, after the land acquisition proceedings. The revenue entry do not show that the said land was shown as 'private forest'. No doubt, there were some species of forest trees in the said land. However, majority of trees comprised of non-forest species, such as Kokam, being 1797 in number, Cashew, 1057 in number and Beate nut, 258 in number.

25. As stated before, the lands, including the land Survey No.195 (New Survey No.189-C), as well as land Survey No.198, were acquired for the Project for modernization of Banda check post etc. Obviously, Award drawn was for payment of compensation. The Award consists of not only market value of the acquired land, but also of the value of standing trees. The acquired land along with trees, thereafter, stood transferred in favour of acquiring body, namely, the Respondent No.1. SaiprasadKalyankar no more had any legal right either in respect of land Survey No.195 (New Survey No.189-C), and had absolutely no concern with land Survey No.197-C, whatsoever. The only concern which he could have is that of environmental degradation due to felling of excessive number of trees. So,

it has to be seen whether due permission was required for felling of trees. There are two (2) categories of trees, which were in land Survey No.189-C. First category comprises of trees of Forest species. Second category comprises of trees of general species (Agricultural species). So far as trees of forest species are concerned, the RTO (Respondent No.1) applied for permission to fell and remove scheduled trees, as per the Application dated 15.10.2013. Such permission was granted under Section 3(1) (b) of the Maharashtra Felling of Trees (Amendment) Act 1988. One cannot be oblivious of the fact that felling of trees was sought for implementation of a public project. Therefore, the RFO, could have considered the Application. It need not be reiterated that land Survey No.189-C, is not declared as 'private forest' nor it is a part of Government Forest and therefore, there is hardly any requirement to seek Forest Clearance (FC) from the Competent Authority.

26. Now, it is true that excessive large number of unscheduled trees have been cut down and removed by the contractor engaged by the Executing Agency, so as to clear the site. It is also true that the RFO and the Tehasildar, Sawantwadi, have not taken any action against the contractor inspite of the knowledge that such illegal felling of trees did occur in the area within their domain and the fact was brought to their knowledge. It is also explicit that no explanation was given by the Executing

Agency and the site-in-charge for excessive cutting of non-scheduled trees or some of the scheduled trees. It appears from the record that only paper work was done and reports were exchanged by those two (2) offices.

27. It appears that large number of non-scheduled trees were also cut down while clearing the site, apart from trees which were allowed to be cut. Thus, the contractor levelled the area by removing all felled trees under the nose of the RFO and the Tehasildar. It appears that meagre penalty of Rs.6000/- was recovered by the RFO, from the contractor, in respect of illegal felling of three (3) trees of forest species, which allegedly were “inadvertently cut down”. In fact, this justification is absolutely without any reason or rhyme. The MSRDC has not filed affidavit of the contractor to justify said “inadvertent” felling of trees. Moreover, the record shows that more than three (3) trees of the forest species were cut down illegally in excess of permission granted in favour of the Respondent No.1 (RTO). This is nothing but highhandedness committed on the part of Executing Agency for which the MSRDC is accountable. The Joint Director of MSRDC cannot escape legal responsibility for illegal act of levelling the ground by illegal cutting of scheduled and non-scheduled trees, without permission of the Competent Authority. It appears that at his behest the contractor took Law in his own hands, under the assumption that such act will be protected.

Needless to say, stern action is required to be taken against the Joint Director of MSRDC, so as to give appropriate signal to such officers of the Government, who do not pay heed to legal provisions, though they are bound to respect the Law.

28. The R.F.O, Sawantwadi, gave Show-cause Notice to one Manoj Abrol, site Incharge of Maharashtra Border Check Post Network Ltd. (Executing Agency engaged by MSRDC), calling him to explain why action be not taken for alleged felling/cutting of 5429 scheduled/non-scheduled trees. The Show-cause Notice dated 30.1.2014, however, does not describe how many scheduled trees were felled and how many non-scheduled trees were felled in that area. It also does not indicate description of nature of the trees, age of the trees, girth of those trees and other details. It is explicit from the record that the MSRDC, Maharashtra Border Check Post Network Ltd, the R.F.O and the then Tehasildar of Sawantwadi, attempted to put all the misdeeds, in this context, under the carpet. They were hand in glove, is very clear from the fact that no serious effort was made to immediately intervene while such tree felling activity was going on. Nor serious action was taken further except giving Show-cause Notice to the site In-charge, who could abdicate legal responsibility later on by saying that he was acting under instructions of the master and bonafidely had done such act. The Director of

the MSRDC and the Sub-Agency as well as the R.T.O. and other Govt. officials have maintained disquieting silence in this behalf. This a glaring fact which speaks volume against them.

Re: Issues(iii) &(iv)

29. Both these issues are interconnected and as such, are being considered together.

30. The Project of Banda check post shifting and modernization thereof, is approved by the Govt. of Maharashtra as part of project of modernization, as per the Govt. Resolution dated 25th March, 2008. The land of SaiprasadKalyankar, was acquired by the Competent Authority on 24th February, 2009. The Writ Petition filed by him was dismissed by the Hon'ble High Court of Bombay on 5th April, 2003. The Govt. of India issued directions under Section 5 of the Environment (Protection) Act, 1986, vide MoEF Notification dated 13th November, 2013, whereby High Level Working Group (HLWG) report prepared under the chairmanship of Dr. K.Kasturirangan, was accepted and area of Western Ghats was declared as Eco-Sensitive Zone (ESZ). It appears that in Sindhudurng district, Banda was included in ESA w.e.f. 13th November, 2013. However, the project in question, was initiated by the Respondent No.1 prior to the said Notification. It is but natural to examine whether the project is affected by said Notification because it falls within ESZ, as per the said

Notification, declared subsequently. In other words, whether the said Notification, is retrospective in effect or will be prospectively applicable, is the question that needs consideration.

31. SaiprasadKalyankar, vehemently argued that the area is enriched with iron-ore on both sides of the National Highway (NH) No.17. He argues that the project require cutting of hills, which tantamount to illegal mining activity. He submits that hill-cutting, levelling of lands, felling of large number of trees, would cause great loss to the environment. The mining activity in the area is illegal, without prior Environmental Clearance (EC). The Respondent No.1 failed to carryout cost benefit study and environment impact, is also not properly assessed before the project was approved. The change of place from Insuli to Banda on 8.3.2008, was effected without considering the environmental impact and therefore, these issues are required to be now examined. As stated earlier, the issue pertaining to change of Insuli check post to Banda check post is already a closed chapter due to dismissal of the Writ Petitions by the Hon'ble High Court. SaiprasadKalyankar cannot be allowed to re-agitate the same issue which must be taken as barred by applying the principle of '*Res-judicata*'. True, it is that the land at the site consists of Fe₂ O₃minerals. The iron-ore is a major mineral of which mining cannot be allowed without prior

Environmental Clearance. The term 'mining' means extraction of valuable minerals or other geological materials from the earth from an ore body, lode, vein, seam, or reef, which forms the mineralized package of economic interest to the miner. It is of common knowledge that mining means extracting minerals from the earth. Mining is required to obtain any materials that cannot be grown through agricultural process or created artificially in laboratory or factory. In a wider sense, mining includes extraction of any non-renewable resources.

32. In any case of mining even activity of winning may be branded as mining. In "**Promoters and Builders Association of Pune and others V. State of Maharashtra**" in **Writ Petition No.785 of 2008**, the Hon'ble High Court of Bombay observed that:

"The plain language of this provision indicates that any excavation which results in obtaining minerals is covered by this definition. Thus, the activity of excavation of land even for laying foundation of building has the effect of obtaining minerals. Even that activity is covered by the definition of mine. It would make no difference that a person while excavating land was not searching for minerals".

Perusal of Section (3) (e) of the Mines and Minerals (Development & Regulations) Act, 1957, would show that the term 'mining operation' is of wide amplitude and is

inclusive of not only extraction of minerals, but also well included winning of minerals or any other activity. In **“Tarkeshwar Sio Thakur Jiuv Bar Dass Dey & Co. And ors” (1979 SCC (3) 106)** Apex Court held that “Mining operation includes every activity by which mineral extracted or obtained from earth irrespective of such activity is carried out on surface or in the bowels of the earth.”

33. Similarly in **“Bharat Coking Coal Ltd v. State of Bihar” (1990 SCC (4) 557)**, it is held that even mere usage of equipment, goods trucks etc. for cutting of soil, would be included in the definition of “mining”.

34. There cannot be two opinion about the legal position that mining cannot be allowed in the area declared as forests, wildlife sanctuaries, buffer zones, as held by **Goa Foundation v. Union of India, Writ Petition (Civil) 435 of 2012**, decided on April 21st, 2014. The restrictions on mining are of course, either due to location of the mining or nature of mining activity, or nature of mining-lease granted or nature of ore, which is extracted or requirement of EC, under the Environmental Clearance (Regulations), 2006. Obviously, lop sided view cannot be taken in such a matter.

35. The decision in each case would depend upon particular facts of that case, is well settled legal position. So far as rights of acquired lands in which mineral stocks

are contained, legal position is explicit from the Dictum in case of "**Monnet Ispat and Energy Ltd v. Union of India, 212 (11) SCC 1**". The Hon'ble Supreme Court, in the given case categorically held that "mining and minerals within its territory vests in the State absolutely". It is held that "the State Government's power as owner of the land and minerals vested in it, is absolute and could not be avoided by MMDR Act, 1957". The view taken by the Apex Court is that "when the land stands vested in the State Government under provision of the special enactment, then consequent of vesting includes absolute right over the minerals, which are part and parcel of the land". In the facts and circumstances of the present case, due to acquisition of lands by Govt. of Maharashtra, it will have to be said that all the rights over the ore of Fe₂ O₃ (Iron ore) stand vested in the State of Govt. inclusive of rights to extract minerals, right to own trees standing in the lands, right to minor minerals etc. Neither Saiprasad Kalyankar, nor any other land owner could have any claim over the same. Of course, Saiprasad Kalyankar has limited right to ventilate grievance about illegal mining, if in fact, there is some illegality of mining activity undertaken by private individual, at the instance of the public authority. The record of present case shows that royalty of Rs. 58,80,000/- was paid by the Respondent No. 1, towards use of minerals from the land in question. The amount was

credited to the Government account at the office of Collectorate, Sawantwadi. The affidavit of Respondent No.1, reveals that amount was deposited much before declaration of land falling within Eco-Sensitive Area (ESA), and prior to Dictum of "*Deepak Kumar & Anr vs State of Haryana and Ors*," IA Nos.12/13 of 2011 in (c) Nos.19628, 19629 of 2009 etc. (SC). What is observed by the Apex Court in "*Deepak Kumar v. State of Haryana & Ors*" is that "mining lease should be less than 5Ha and preparation of comprehensive mine plan, is required to be prepared". The Apex Court recommended that "the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments, may reexamine the classification of minerals into major and minor categories so that regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with lease impacts on environment". We may, however, mention here that in "*Deepak Kumar and others*", the Apex Court gave interim directions and particularly in the context of mining leases and area of mines.

36. Coming to the EIA Notification, dated 14th September, 2006, relevant entry of schedule for the present purpose is "1(a)". It would be appropriate to reproduce the relevant entry, in order to amplify understanding of the subject.

SCHEDULE

(See Paragraph 2 and 7)

List of Projects or Activities requiring Prior Environmental Clearance

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
18 [1(a)]	(i) Mining of minerals (ii) Slurry pipe-lines (coal lignite and other ores) passing through national parks/sanctuaries/coal reefs, ecologically sensitive areas.	>50 ha of mining lease area in respect of non-coal mine lease >150 ha of mining lease area in respect of coal mine lease Asbestos mining irrespective of mining area All projects	<50 ha >ha of mining lease area in respect of non-coal mine lease <150 ha >50 ha of mining lease area in respect of coalmine lease]	19 [General conditions shall apply Note; (i) Prior environmental clearance is as well required at the stage of renewal of mine lease for which application should be made up to one year prior to date of renewal (ii) Mineral prospecting is exempted.]

37. There cannot be any doubt about the purpose of placing restrictions on certain activities mentioned in the above entry shown in the EIA Notification. All these categories shown under the category 'A' and 'B' relate to "leases of mine areas". Obviously, the entry would be applicable only in case of mining leases. The extraction of minerals will be permitted only on payment of royalty, if permission by private owner is sought from the competent Authority. In legal parlance mining activity without holding reconnaissance permit or prospective licence or as the case may be mining lease, as required under Sub-clause (1) of Section 4, of the Mines and Minerals

(Regulation and Development) Act, 1957, is to be termed “illegal mining”, because mineral rights vest in the State Government and State Government is the owner of mineral wealth, wherever it is found. Being owner of mineral wealth, the State Government can assign rights of extraction of mineral to anybody under the provisions of MMRD Act, 1957 and the Rules made thereunder. Obviously, the fact that right to utilize the earthen layer extracted after winning of the land area, during course of levelling for the purpose of filling of pits at the site of project, is assignment of work, which the State Govt. can duly perform within its right. As stated before, the Respondent No.1, has paid royalty of Rs.58,80,000/- for such purpose. Secondly, the Respondent No.1, is part of Government Agency, and the project also is for benefit of the members of public. Under the circumstances, if we will consider the ratio of **Monnet Ispat and Energy Ltd**, it is explicit that grant of prospective licence/right to remove iron-ore from a particular site, is within domain of State Government’s paramount right and is not affected by MMRD Act, 1957. Secondly, EC may be required if the mining lease is sought by the Project Proponent, for certain areas of more than 5 HA, shown in the entry 1(a) of the schedule appended to the EIA Notification. Though in the present case, the project area is said to be the land is acquired for development of check post, and no mining

lease has been granted, contemplating use of this land for mining purpose than 5 Ha. Apart from this, the project was approved by the State Government in or about in 2008. The Resolution dated 25th March, 2008, was passed for acquisition of lands with a view to modernize the border check posts alongside NH No.17. Consequently, the project in question does not require prior EC and is not obviously affected due to absence of EC.

38. The declaration of Notification dated 13th November, 2013, which includes village Banda within area of 'Western Ghats' declared as ESA, also will not impede the project in question. As stated before, the project triggered in the month of March, 2008. The area was declared as ESA much thereafter. The Notification cannot be applied retrospectively. The project in question must be considered as 'ongoing project activity'. In case of "**Goan Real Estate Construction Ltd. & Anr vs People's Movement for Civil Action**" (2008) 8 SCC 645, the Apex Court held that "ongoing construction activity", which was undertaken prior to or during pendency of Dictum in '**Indian Council Environ- Legal Action**' which was decided earlier (reported in "J.T.1996 (4) SC 263") could be protected, inasmuch as it was 'ongoing activity'. By applying same analogy, we may say that declaration of Banda village within ESA in November, 2013, will not impact the project in question, which had already started in 2008. Because it

can be treated as 'ongoing activity' notwithstanding the fact that actual construction work is yet not proceeded with due to several obstructions caused by SaiprasadKalyankar, in view of filing of various litigations, including Writ Petitions, present Application etc. SaiprasadKalyankar alleges that the construction activity requires Environmental Clearance (EC), because the area covered thereunder is of more than 20000 sq.mtrs. We do not agree. The reply affidavit of the Respondent No.1 (Paragraph 14) categorically shows that the proposed construction area is 14,043 sq.mtrs, which is much below the prescribed limit of 20000 sq.mtrs. The Project activity below 20000 sq. mtrs of construction does not require any EC and as such, the argument of SaiprasadKalyankar, is unacceptable. Considering these aspects, we are of the opinion that both these issues ought to be answered in negative and they are accordingly so answered.

Re: Issue (v):

(v):(a)

39. There is no dispute about the fact that the part of project land was in command area of Tillari Irrigation Project. It is an admitted fact that only small part of the project falls within command area of the irrigation canal area of Tillari. It has been brought on record that the Respondent No.1, has already filed an Application to the Competent Authority, seeking permission from the said

Authority for delineation of area from the irrigation command area, in order to avoid technical problem. The Competent Authority is dealing with the said Application. The present Application, in fact, should not have impaired the decision of such Application. The Application is moved by the Respondent No.1, and is addressed to the Secretary of Irrigation Department (Command) Mantralaya, Mumbai, by the Chief Land Survey Officer. Tillary canal runs from left side of NH No.17, and therefore, such permission is sought on behalf of the Respondent No.1. The project may be, therefore, allowed to be completed if such permission is granted by the competent Authority or is already granted. Thus, formality shall not detain us from deciding the present Application. Moreover, the Hon'ble High Court has already held that the project may be executed by acquiring the lands from the command area after following due procedure. Needless to say, if due permission is accorded by the competent Irrigation Authority, then there would be no illegality in the process of execution of the project in question.

(v):(b)

40. Now, SaiprasadKalyankar further alleges that entire project activity is erroneous and illegal, inasmuch as Geologist of the Directorate of Geology and Mining, came to the conclusion that the project area may incorporate the substantial quantity of iron ore and therefore, NOC, may

not be issued to the RTO. He relied upon communication dated 11.2.2010 (Ex-I-42). We are of the opinion that the question of NOC is the matter of procedure and it is for the RTO, to get procedural difficulties solved at his end. SaiprasadKalyankar, would submit that the project cannot be allowed, because there is no prior permission granted by the National Highways Authority. This action is procedural requirement, which the Respondent No.1, will have to complete, if so needed, before going ahead with the project in question. At the present, these procedural requirements cannot be regarded as stumbling blocks, which would have enough to set aside the project activity in toto. We, accordingly, hold that the project cannot be held as illegal for other procedural requirements, though the Respondent No.1, will have to obtain certain permissions from the competent Authorities before going ahead with the project in question. This answers both parts of the issue under consideration.

41. Cumulative effect of foregoing discussion, is that the Application is without merits and will have to be dismissed. However, we find it necessary to give certain directions before the project is allowed to go ahead and also to deal with highhanded activities of erring officials of the MSRDC, RTO, Tehasildar and RFO, without whose connivance, a large number of tree felling activity could not have been undertaken at the site. The highhandedness

with which they acted and cleared the area by felling of trees and removal of a large number of trees, must be deprecated. They are liable to compensate for loss of trees and also for the act of lack of probity while discharging the public duties.

In the result, we dismiss the Application with following directions:

- i)** Divisional Commissioner, Kokan Division, is directed to conduct preliminary enquiry through Collector for illegal felling of trees, levelling of site in the area of Gut No.195 (189-C), for the project of Border Check Post at Banda by MSRDC. The report should indicate responsibility for inaction on the part of RTO, RFO, Tehsildar and officers of the MSRDC, including the Joint Director of MSRDC, towards intentional omission by anyact of negligence,or commission ordereliction of duty, or purposeful aiding in felling of trees to facilitate execution of the project.
- ii)** Heads of such offices be informed to take appropriate departmental actions against such officers. The report shall be forwarded to this Tribunal within period of six (6) months hereafter, with details of the proposal

forwarded to the concerned departments for Departmental actions to be taken against the concerned officers/officials.

iii) The concerned departments like Transport Department, Forest Department and MSRDC, shall take suitable departmental action against the officials, who are found to be guilty of misconduct and shall submit a report to this Tribunal, six (6) months thereafter.

iv) The Respondent No.9 (MSRDC), shall carry out compensatory afforestation of 44,000 trees (1:8) in the same area, on the slope in the acquired land or area near NH No.17, as per the opinion of the Agricultural University, Dapoli. The work shall be supervised by the Head of Horticultural Department of Agricultural University, Dapoli, to whom honorarium of Rs.25,000/- p.m. be paid by the MSRDC, which shall not be included in cost of the project. The Respondent No.8 (MSRDC), shall deposit an amount of Rs. 10 lakh (Rs. Ten lakhs) as tentative cost for such afforestation programme to be executed through Agricultural University, Dapoli, under the supervision of above Committee, in the

Collector's office, Sindhudurg, within two (2) months hereafter.

- v)** The contractor – Agency of MSRDC, be directed by the MSRDC to pay costs of Rs. 10 lakh, being costs of damages caused to environment in the vicinity of village Banda and if the Executing Agency will not pay the same, it shall be paid by the MSRDC, which shall not be included in the cost of the project, but shall be recovered from the personal account of concerned supervisory officers of MSRDC, if found responsible for felling of the trees, as per the report of the Divisional Commissioner, Kokan Division.
- vi)** An appropriate departmental action be initiated against Mr. Sanjay BhausahabPatil, RFO, by the Chief Conservator of Forests (CCF) concerned, on account of furnishing wrong information to the Tribunal, that the land in question is a part of forest land and for facilitating felling of large number of trees, which could be avoided if he had *prima facie* taken timely action to avoid loss to the environment.

vii) The competent Authorities shall report result of such departmental enquiries to this Tribunal within period of eight (8) months hereafter.

viii) Non-compliance of above directions may attract section 26 of the NGT Act, 2010.

ix) SaiprasadKalyankar, appears to have filed the Application due to his earlier rounds of litigations in respect of acquisition of land or may be at the behest of some external agency. Therefore, we do not impose costs on him, though his Application is found to be without merits.

x) The Application is accordingly disposed of.

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

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

Date: September 10th,2014