

BEFORE THE HON'BLE NATIONAL, CENTRAL ZONAL BENCH AT BHOPAL

O.A. NO. 24/2016 (CZ)

PETITIONER : KISHORE DEEPAK KODWANI

VERSUS

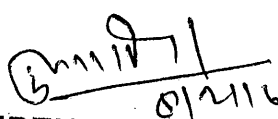
RESPONDENT : STATE OF MADHYA PRADESH & OTHERS

INTERVENER : MADHYA PRADESH HIGH COURT,

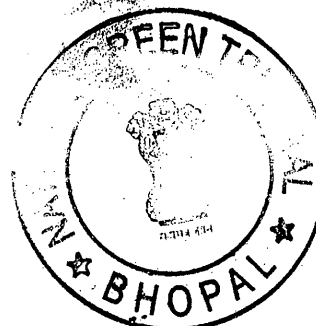
INDEX

S.No.	Description of documents	Annex. No.	Page No.
1.	Index	:	1
2.	Application for Dismissal With Affidavit	:	2-4
3.	Judgment and order dated 02.08.2013	: Annx. - H	

BHOPAL
DT. 08/02/2016


 (BHUPENDRA KUMAR NIGAM)
 REGISTRAR (ADMIN)
 FOR THE INTERVENER,
 HIGH COURT OF MADHYA PRADESH, JABALPUR

FILED ON 08/02/16 at sl no. 90.
 by Adv. Shri. Bhupendra K. Nigam



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, CENTRAL
ZONAL BENCH AT BHOPAL**

O.A. NO. 24/2016 (CZ)

PETITIONER : KISHORE DEEPAK KODWANI

VERSUS

RESPONDENT : STATE OF MADHYA PRADESH & OTHERS

**INTERVENER : MADHYA PRADESH HIGH COURT,
Through its Registrar General,
Jabalpur – 482001 - MP**

**APPLICATION FOR DISMISSAL OF THE PRESENT APPLICATION AT
THE ADMISSION STAGE**

That the present intervener begs to submit as under:

- 1 That the petitioner has filed the present petition making sorts of allegation pertaining to legalities of permissions / allotments / land use changes made with respect to the lands allegedly recorded as "Water Reservoirs / Talaab" in the revenue records further relief has been prayed seeking interference in the construction & development of District Court Campus of Indore District in the said application during its pendency. The present intervener has felt the necessity of intervening in the present application due to the challenge to and issues pertaining to the legality of various allotments and permission issued for development of Indore District Court Campus and qua that limited relief, the present application has been filed accompanied with an application for intervention.
- 2 That for all intent and purposes of the present application, the intervener adopts the various submissions, facts, grounds, preliminary objection taken / pleaded / stated in the accompanying intervention application in their entirety. The applicant intervener also craves liberty to refer to them at the time of oral submissions. The same are thus not reiterated for avoiding any repetition in the matter.

B-22

- 3 That the intervener has already taken the preliminary objection pertaining to maintainability of the present application before this Hon'ble Tribunal on multiple grounds like jurisdiction, limitation, etc. in their accompanying intervention application. The intervener aptly in the above context seeks to refer and rely upon the judgment and order dated 02.08.2013 passed by the Division Bench of this Hon'ble Tribunal in the matter of **Raza Ahmed Vs. State of Chhattisgarh and Ors.** – Appeal No. 1/2013 (CZ), etc., annexed herewith as **ANNEXURE - H**. In the aforestated judgment it has clearly been held that issues, reliefs and grounds not covered by any of the enactments specified under **Schedule-I of the NGT Act 2010** shall not be within the jurisdiction of the NGT and issues pertaining to town planning, municipal and change of land use are to be adjudicated before the appropriate forum. Such issues cannot be litigated or brought before the NGT in view of the fact that this Hon'ble Tribunal is a creation of a statute with powers and jurisdiction limited by the parent statute of NGT Act. 2010 without any inherent powers to adjudicate all and every issue coming before it. The aforestated judgment of the coordinate bench is binding on this Hon'ble Tribunal and in view of the law laid down in the aforestated judgment, the reliefs claimed by the applicants pertaining to challenge to establishment of Indore District Court are the once principally relating to the issues on which this Hon'ble Tribunal does not possess the jurisdiction to adjudicate.
- 4 That apart from the above, on the issue of limitation, the coordinate bench of this Hon'ble Tribunal – Weistern Zone Pune Bench through its judgment and order dated **08.04.2015** passed in the matter of **CAVELOSIM VILLAGERS FORUM VS. VILLAGE PANCHAYAT OF CAVELOSIUM AND ORS.** – Application No. 61/2014 laid down the principles pertaining to calculation of limitation period u/s 14 of the NGT Act with respect to the time limit within which disputes are to brought before this Hon'ble Tribunal. Clearly, as stated in the accompanying intervention application, the challenge to the establishment of Indore District Court is hopelessly barred by limitation without any plausible justification being offered for the same. On this ground also, the application with in so far as it relates to the relief of challenge to the establishment of Indore District Court deserves to be thrown out at the threshold.
- 5 That in view of both the judgments referred to above, therefore the pleasant application (in so far as it relates to the relief of challenge to the establishment


of Indore District Court), deserves to be dismissed at the admission stage and be so kindly done by this Hon'ble Court forthwith.

PRAYER

In light of the above facts, documents and pleadings this Hon'ble Court be pleased to :-

- (a) Dismiss the present petition with heavy costs without extending any kind of indulgence at the admission stage in light of the preliminary objections and grounds raised in the present reply (*in so far as it relates to the relief of challenge to the establishment of Indore District Court*).
- (b) Any other relief or direction which this Hon'ble Courts things fit in the interests of justice.

BHOPAL
DT. 08/02/2016


(BHUPENDRA KUMAR NIGAM)
REGISTRAR (ADMIN)
FOR THE INTERVENER,
HIGH COURT OF MADHYA PRADESH, JABALPUR

BEFORE THE NATIONAL GREEN TRIBUNAL,
CENTRAL ZONAL BENCH,
BHOPAL

Appeal No. 01/2013 (CZ) (P.B. 27/2013 THC)

In the matter of

Raza Ahmad
S/o (late) Ziauddin Ahmad,
R/o House No. 113A, Imam Bara Chowk,
Faridnagar, Supela, Bhilai,
Dist. Durg, Chhattisgarh

.....Applicant

Vs.

1. State of Chhattisgarh
Through Secretary,
Housing and Environment,
Mantralaya, DKS Bhawan,
Raipur, Chhattisgarh
2. Ministry of Environment & Forest,
Government of India, Through its Secretary,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi.
3. Chhattisgarh Environment Conservation Board,
Through Regional Officer,
5/32 Bangla, Bhilai Dist. Durg,
Chhattisgarh.
4. Collector, Dist. Durg, Chhattisgarh
5. Director, Town & Country Planning Bhilai,
District Durg, Chhattisgarh
6. Commissioner, Municipal Corporation of Bhilai,
Dist. Durg, Chhattisgarh
7. Steel Authority of India Ltd.,
Through its Company Secretary,
Ispat Bhavan, Lodhi Road,
New Delhi-110003.
8. Managing Director, Bhilai Steel Plant,
Ispat Bhawan, Bhilai,
Dist. Durg, Chhattisgarh
9. Executive Engineer,
Chhattisgarh State Power Transmission Co. Ltd.
Bhilai, Dist. Durg, Chhattisgarh
10. M/s Bhilai Jaypee Cement Ltd.,
Through its Managing Director,
Dist. Durg, Chhattisgarh.

.....Respondents

Counsel for Applicant :

Shri Shishir Dixit, Advocate

Counsel for Respondents :

Shri Apoorv Kurup, Advocate
Shri Sachin K. Verma, Advocate
Smt. Yogmaya Agnihotri, Advocate
Smt. Bharti Shashi, Advocate
Shri Ajay Gupta, Advocate
Shri Deepesh Joshi, Advocate
Shri Mahavir Bhatnagar, Advocate

ORDER/JUDGMENT

PRESENT:

Hon'ble Mr. Justice M. Chockalingam (Judicial Member)

Hon'ble Dr. Ajay A. Deshpande (Expert Member)

7

Delivered by Hon'ble Justice M.Chockalingam

1. In pursuance of the order of transfer made in Writ Petition (PIL) No. 5467/2011 by the High Court of Chhattisgarh, Bilaspur, the appeal was taken on file by the Principal Bench, National Green Tribunal, New Delhi and on transfer, this appeal is taken on file by this Bench.
2. The appellant, an active Member of Chhattisgarh Swabhiman Manch, a social and political organisation concerned with the equitable balance and sustainable development of Chhattisgarh, both industrial and agricultural and also the improvement of the living standards of its people, has brought forth this appeal challenging the impugned notification no. F/7-24/32/2010 dated 03.02.2011 issued by the respondent no. 1 whereby the land use of certain land reserved for green belt development plan of Bhilai was modified to industrial purpose to regularise the construction of respondent no. 10 Bhilai Jaypee Cement Ltd. (hereinafter referred to as BJCL) as also the Environmental Clearance dated 01.05.2008 granted to respondent no. 10 which has categorised the project wrongly as category B2 and thus, issued without a preparation of EIA report conducting of public hearing / consultation is otherwise totally illegal.
3. As could be seen from the averments made by the appellant, the case of the appellant in short is that the Steel Authority of India Ltd. (hereinafter referred to as SAIL), a Government Company registered under the Companies Act, entered into a Memorandum of Understanding with the Jayprakash Associates in April'2007 to establish a factory to manufacture cement and in pursuance of the same, M/s BJCL, respondent no. 10 herein, was established and registered under the Companies Act. An area of 34.59 acres of land

8

belonging to the Steel Authority of India Ltd. was transferred to respondent no. 10 on 15.06.2007. Respondent no. 10 applied for Environmental Clearance and the same was granted by the Central Government on 01.05.2008 on the basis of a wrong categorisation of the new unit for manufacture of 2.2 MTPA of cement as category B2 and thus exempting the project from mandatory procedure such as submission of EIA report and holding of public hearing / consultation. Whereas, the guidelines of respondent no. 2 clearly held that such a project would be category 'A'. Following the same, respondent no. 10 carried out the construction without obtaining building permission including permission for constructing high rise building from respondent no. 6 Municipal Corporation of Bhilai and made the first application for the same on 04.05.2009 after completion of the construction. Both respondent nos. 5 & 6 issued several notices to the respondent no. 10 to bring the land to the original situation or to face demolition of the structure. After several reminders, a high level committee was constituted by the respondent no. 6 which held that the permission could be granted after the land use was modified. Both respondent no. 10 BJCL and respondent no. 8 Bhilai Steel Plant (hereinafter referred to as BSP) were pressurising respondent no. 6 for conditional NOC stating that they have already approached respondent no.1, State for modification of land use and the same was under consideration in the Ministry and they were confident of a positive response. The respondent no.1 State *suomoto* considered the case of modification of land use under Section 23 (A) of Chhattisgarh Nagar Tatha Gram Nivesh Adhinyam Act 1973. On 22.05.2010 on the basis that use of slag, production of cement, taxes so obtained and employment generated by the respondent no. 10 constituted 'urgent public purpose'. The said proposed modification in land use was published in two circulated evening news papers

without any modified development plan as stipulated. The objections were heard in Ministry office far away from the site of modification without assuring adequate participation and reasonable opportunity. Rejecting the objections regarding the issues and concerns on the environment the respondent no.2 has issued environmental clearance mechanically, relying on the basis of wrong categorisation of the project. Even the illegal construction completed prior to the modification was not considered in issuing the impugned notification. The appellant raised all his objections against the proposed modification of the land use and also attended the public hearing held in Mantralaya and made oral submissions. It is surprising to note that respondent no. 10 never made any effort to obtain necessary permissions prior to beginning its construction which was done immediately after the execution of the lease deed and the permission to divert the land use from green belt to industrial purpose or for construction of high rise building was also not obtained. It was strange that the respondent no. 10 adopted the strategy of erecting the construction first and then pressurised the authorities to regularise the illegal construction. This is a matter of shock that the Environmental Clearance granted to respondent no. 10 by respondent no. 2 on 01.05.2008 was, on the very face of it, based on incorrect presumptions. The project is referred to as cement grinding unit thereby giving an impression that it is a cement grinding unit. From the records available it would be clear that the proposed cement plant of 2.2 MTPA was not a standalone grinding unit nor an expansion of existing cement plant but was clearly a project of category 'A' and thus it could not be exempted from the preparation of EIA report and statutory public hearing / consultation and at no stretch of imagination it could never be categorised to category B2 project. All this would be indicative not only the Environmental Clearance granted by

10

respondent no. 2 to respondent no. 10 was on the face of it illegal but one without any application of mind. In the instant case, it was neither expansion nor modification nor change of product mix but it is infact a new unit for manufacture of 2.2 MTPA of cement. Respondent no.3, Chhattisgarh Environment Conservation Board (CECB) has also granted permission on the land of the green belt area without any application of mind. In so far as the modification of land use of the green belt for industrial purpose, respondent No. 5, Joint Director, Department of Town and Country Planning Bhilai issued a notice on 24.11.2009 to respondent No. 10 regarding modification of land use of the green belt area without permission and if the respondent No. 10 did not restore the land in question to its original situation within 30 days there from, action would be taken under the provisions of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam and illegal development/construction would be removed and the cost of the same would be recovered as arrears of land revenue. The respondent No. 10 issued a reply stating that the land in question belongs to respondent no. 8 BSP and the site was covered with slag and other waste products of BSP and an application for modification of land use was pending and the respondent no. 10 has not violated any law. The respondent no. 8 sent a communication to the Chief Secretary of the respondent no. 1 State on 21.01.2010 regarding modification of land that the BSP was not at all aware that the area had been declared as green belt area and it was also not taken into confidence in preparation of the Bhilai Development Plan. Alternative sites could have been made available to the respondent no. 10 without building in the green belt area which would not have been in the vicinity of the residential area and zoological parks. As for all the above, the impugned notification was issued on 03.02.2011 which was published in Chhattisgarh Gazette on

18.02.2011. After making enquiries regarding the same the appellant needed to obtain large number of documents from respondent no. 2 authorities to substantiate his case for which he made an application under Right to Information Act and thus, there was no delay in filing the appeal. Hence, he has sought for the reliefs. The appellant, as a public spirited individual who is interested in clean environment, has a right to challenge the diversion of the green belt to an industrial purpose, environmental clearance and also for the restoration of the green belt area to its original situation prior to the construction of the respondent no. 10. Hence the appellant has sought for the necessary remedies.

4. At the outset, the Learned Counsel for the respondents, before refuting the above contentions put forth on the side of the appellants strongly challenged the very maintainability of the appeal on the ground of limitation and jurisdiction.

5. Advancing the arguments, the Learned Counsel for the respondent no. 10 would submit that the appellant has challenged the Environmental Clearance dated 01.05.2008 issued by the respondent no. 2 and the conversion of land use from green belt to industrial purpose. Both reliefs do not fall under the purview National Green Tribunal Act, 2010 or within the jurisdiction of the National Green Tribunal. It is the specific case of the appellant that the Environmental Clearance was granted by the respondent no.2 to respondent no. 10 on 01.05.2008. No appeal was filed before the NEAA under Section 11 of the NEAA Act on or before 17.10.2010 i.e. even after approximately 900 days. The NGT Act came into force on 18.10.2010. Though, the appellant has filed the Writ Petition (PIL) before the High Court of Chhattisgarh, Bilaspur only on

12

08.09.2011. Thus, the appellant has not availed the remedy under NEAA Act. The said Act stood repel under the NGT Act w.e.f. 18.10.2010. The Tribunal is a creation of statute and the jurisdiction cannot be stretched beyond what is expressly conferred by the Act. No statutory authority, whether empowered by the Hon'ble Apex Court, can act dehoarse of the statute. Since, no appeal was filed under NEAA Act prior to 18.10.2010, it would be stated that there was no pending case to be adjudicated under Section 14 of the NGT Act, 2010, apart from that the appellant has filed PIL before the High Court of Chhattisgarh on 08.09.2011 i.e. long after the commencement of the NGT Act which came into force on 18.10.2010 and thus, it is quite clear that the appeal was barred by time and filed beyond the prescribed period of time envisaged under the NGT Act. The dispute of land use change carried out by the Government of Chhattisgarh as per the provisions Chhattisgarh Town and Country Planning Act, 1973 also do not fall under the enactments specified in the Schedule – I of the NGT Act. Under Section 14(1) of the NGT Act, the Tribunal has jurisdiction over all civil cases where a substantial question relating to environment including the enforcement of any legal right relating to environment is involved and such question arising out of the implementation of the enactment specified under the Schedule – I and thus, the above dispute as to the land use falling under the provisions of the Chhattisgarh Nagar Tatha Gram Nivesh Adhinyam, 1973 falls outside the jurisdiction of the Tribunal. The jurisdiction of the Tribunal cannot stretch the language of the statute and thus, the petitioner at no stretch of imagination can be allowed to plead that the limitation has to be reckoned from 03.02.2011 as per his own interpretation and convenience.

6. Advancing his further arguments, the Learned Counsel would submit that the environmental clearance issued by the respondent no. 2 to the respondent no. 10 on 01.05.2008 has become absolute since under Section 11 of the NEAA Act, 1997, the appeal should have been filed within 30 days of the date of the order and the authority can entertain the appeal if filed within the said period but not after 90 days from the date, if it was satisfied that the appeal was prevented by sufficient cause from filing the appeal in time. The date of communication of order or date of knowledge of order, therefore, was not relevant at all. Thus, the language of the said provision was very clear and unambiguous. In the present case, the appeal was preferred by the appellant on the ground that the date of knowledge was 03.02.2011 and thus, the appeal was within time. The same is not only misconceived but erroneous also. The NGT Act, 2010 came into force on 18.10.2010 and any order or environmental clearance granted / refused on or after coming into force of the NGT Act could be challenged before the NGT by way of an appeal under Section 16 of the NGT Act, 2010 and thus, no appeal is maintainable under Section 16 of the NGT Act also. The appellant originally filed the Writ Petition before the Hon'ble High Court of Chhattisgarh at Bilaspur wherein the respondent took a plea that the matter of change of environment is well within the domain of NGT. It is pertinent to point out that the respondent took the objection on the point of limitation in that Writ Petition before the High Court. Thus, the contention put forth by the appellant side that the respondents are taking inconsistent stand that the respondent contending before the High Court that the appellant had an effective and efficacious remedy by approaching the NGT for the purpose of challenging the ground for Environmental Clearance and on transfer to the NGT, the respondent has raised the objection that it was barred

14

by time. Since the appellant has chosen to file a Writ Petition before the High Court knowing fully well that his appeal was time barred and hence, he could not prefer an appeal before the Tribunal and hence, he filed a Writ Petition before the High Court and got an order of transfer of the same to the NGT. Thus, it would be clear that the Environmental Clearance challenged in the present case is without jurisdiction and also hopelessly barred by limitation.

7. The Learned Counsel would further add that the appellant has challenged the notification dated 03.02.2011 by which the land use was modified from green belt to industrial purpose. The said relief is outside the jurisdiction of the Tribunal as modification of the land use was done by State of Chhattisgarh, Housing and Environment Department in exercise of its powers under Section 33(A) of Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973. The said enactment is not specified in Schedule – I of NGT Act, 2010. The contentions put forth by the appellant side that he has also sought a relief for that the land should be restored to its original condition as it was prior to its construction, therefore, the limitation of 5 years shall be applicable as provided in Section 15 of the NGT Act, 2010. The said argument was devoid of merits. The said limitation of 5 years would apply if somebody, despite the area being marked as green, is using for some other purpose i.e. to say that avail relief of restoration or restitution of property is independent and not based on the change to any statutory action. In the instant case, the State Government has modified the land use from green belt to industrial use by exercising its statutory powers. It is also pertinent to note that the land notified as green belt area is used for industrial purpose. If the relief is to be granted for restoration, it would become necessary to examine the validity of action of the Government in modifying the land use under the provisions of Chhattisgarh Town and

Country Planning Act and the said enactment is also not included in the Schedule-I of the NGT Act, 2010. Thus, it would be quite clear that the change of use and the restitution of property would be consequential relief. When it is clear that the relief of land use cannot be granted to the appellant as it did not fall within the jurisdiction of the Tribunal then granting consequential relief would not arise. Thus, NGT would not have the jurisdiction to decide the basic question of limitation or to examine the consequential relief arising thereof. Mere transfer of the Writ Petition to the NGT, the question as to jurisdiction and limitation cannot be ignored or avoided and they have to be answered.

8. In order to support his contentions, the Learned Counsel relied upon the following decisions :

- (i) Union of India Vs. Popular Construction 2001 (8) SCC 470.
- (ii) Singh Enterprises CCE, 2008 (3) SCC 70.
- (iii) Bhopal Gas Peedith Mahila Sangathan & Ors. Vs. Union of India WP No. 50/1998.

9. The Learned Counsel for other respondents adopted the arguments of the respondent no. 10.

10. Countering the aforesaid arguments, the Learned Counsel for the appellant would submit that the present appeal has been transferred from the High Court of Chhattisgarh in view of the judgment of the Hon'ble Supreme Court in the matter of Bhopal Gas Peedith Mahila Udyog Sangathan and Others wherein the Hon'ble Supreme Court directed for the transfer of all cases pending before various Courts in view of the commencement of NGT. The present appeal related to the violation of the provisions of the NEAA, 2006 though it related to the legal right to healthy and cleaner environment and the

16

right of citizen to pollution free environment which is an integral part of Article 21 of the Constitution of India. The appellant has raised the issues in respect of blatant violation of law and of diversion of areas earmarked as green belt for industrial purpose and post facto change in the land use after presenting a fate accompli situation. The appellant has prayed for restoration of the area of green belt which is a principal prayer which is covered under Section 15 of the NGT Act, 2010. Respondent no. 10 has taken a diametrically opposite stand with regard to jurisdiction and limitation before the High Court and the Tribunal. The respondent, in para 27 of the reply filed before the High Court of Chhattisgarh, stated that the Writ Petition should be dismissed as the statutory and efficacious alternative remedy of filing appeal before the NGT was available to the appellant. Now, the very same respondent has taken the stand that the Tribunal has no jurisdiction to entertain the appeal and the appellant is also barred by limitation. The respondent has even put forth a submission that the matter could be transmitted back to the High Court and thus, it would be indicative of the sole confidence of the respondent to say that the matter was not to be heard on merits and the illegal activities continue unhindered. While transferring the Writ petition, the High Court observed that the basic challenge is the EC, notification regarding diversion of land for restoration of area and transferred it to the Tribunal to decide the same and the said transfer was made since the NGT has jurisdiction to decide the present issue that too in view of the judgement passed by the Hon'ble Apex Court in case of Bhopal Gas Peedith Mahila Udyog Sangathan and Others. The contention of the respondent side that the appeal was delayed and barred by time has no merits since the appeal was not an appeal directly filed under

Section 16 but an appeal seeking the relief under Section 15. The appellant had sought for three reliefs.

11. Firstly, to restore the leased out area of 34.59 acres to its original situation prior to the construction of the respondent no. 10. Section 15(3) of the NGT Act, 2010 provides that the limitation of filing an appeal for restitution of environment is 5 years from the date of which the cause of action first arose. The Principal Bench of the NGT has clarified the issue of limitation with respect to Section 15 of the NGT Act in *Nisarga Nature Club V/s Satyawar Prabhudesai* in Application No. 29/2012. The case relates to a challenge to a permission granted by the Government to change the use of land from agricultural to non-agricultural and the same was challenged by way of PIL in High Court of Bombay Goa and the same was withdrawn with liberty to file before the NGT. The said order of conversion was passed in 2009 and the primary objection was raised by the respondent with respect to limitation. After hearing both sides, the Principal Bench, NGT rejected the contentions put forth by the respondent side on the point of limitation and held that the prayer for restitution of land in question would have to be considered.

12. The Learned Counsel would further urge that the judgment of the NGT in *Thervoy Gramam Munnatra Nala Sangam V/s Union of India* relied upon by the respondents is not applicable to the present facts of the case. In that case, the applicant filed a petition before the High Court and subsequently withdrew the same to file before the NGT. The Principal Bench dismissed the same on the delay and laches but in the present case, the Writ Petition filed by the appellant was transferred by the High Court to the Tribunal. The subject matter in *Thervoy* case related to an appeal under Section 16 of the Act and did not pray for restoration as provided under Section 15 of the Act.

13. Further, the Learned Counsel with vigour and vehemence added that the present appeal relates not just to Environmental Clearance but also to the notifications dated 03.02.2011 modifying certain parcels of land designated as green belt to industrial purposes. The present appeal seeks restoration of the green belt which is covered under provisions of the NGT Act. The Schedule – II of the Act specifically states that the compensation and relief should be sought for any harm, damages or destruction to flora including aquatic flora, crops, vegetables, trees and orchards. Further Clause (k) deals with restoration on account of harm, damage to environment including pollution of soil, air, water, land or ecosystem. Thus, the principal prayer of appellant is restoration of the green belt so that legal and fundamental rights of the citizens to a clean and healthy environment under Section 21 of the Constitution is protected. The people residing in the vicinity of the plant are already impacted due to pollution. An area earmarked to reduce and absorb the pollution i.e. the green belt has now turned out to be the source of pollution due to the setting up the cement plant. The appellant should succeed in securing an order for restoration by proving that the conversion was illegal and improper and the environmental clearance is a key document to show the illegality as well as the process adopted in security approval for cement plant in violation of the law. Thus, the environmental clearance as well as the notification for change in land use has to be considered while deciding the issue of restoration of the green belt. Therefore, the contention put forth by the respondent are devoid of merit and have got to be rejected and the appeal has got to be heard on merits since it is within time and jurisdiction of the Tribunal.

14. In order to support his contentions, Learned Counsel relied on following cases :

- (i) Bhopal Gas Peedith Mahila Udyog Sangathan and Others
- (ii) Nisarga Nature Club v/s Satyavan Prabhudesai (Application No. 29/2012) [National Green Tribunal (PB), New Delhi].
- (iii) Collector, Land Acquisition V/s Katiji [1987 AIR 1353, 1987 SCR(a) 387].
- (iv) Improvement Trust Ludhiana V/s Ujagar Singh and Others [2010 (6) SCC 786].
- (v) N.Balakrishna V/s M.Krishnamurthy [2008 (228) ELT 162 (SC)].

15. The Tribunal paid its anxious consideration on the submissions made and looked into all the material available.

16. Admittedly, the appellant herein original filed Writ Petition (PIL 5467/2011) on the file of the High Court of Chhattisgarh, Bilaspur whereby an order of transfer dated 28.01.2013 was made pointing to the observations made by the Hon'ble Supreme Court in Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 326 and also observing that the question of environmental clearance may be gone into by the National Green Tribunal. In pursuance of the said order of transfer, this appeal was taken on file.

17. In that writ petition, the reliefs sought for are as follows:

- (a) That the notification No. F/7-24/32/2010 dated 03.02.2011 modifying land use of certain parcels of land designated in the Development Plan of Bhilai as "green belt" to "industrial purpose" be quashed.
- (b) That the Environmental Clearance issued by the Respondent No. 2 Ministry of Environment and Forest on 01.05.2008 to the Respondent No. 10 BJCL be quashed as, on the very face of it, it has wrongly categorized the project as Category B2 instead of

Category A, and was therefore issued without following mandatory procedures. Concealment of material facts, use of fraud and fabricated documents, and causing environmental damage in violation of explicit conditions imposed, including initiating a review of environment clearance granted to the Company by the Respondent No. 3 CPCB.

- (c) That the 34.59 acres of land designated as "green belt" leased out to the Respondent No. 10 BJCL be restored to its original situation prior to the construction of the Respondent No. 10 BJCL.
- (d) That any other order may be deem fit under the facts and circumstances of the case also be granted by the Hon'ble Court.

18. As can be seen from the averments made in the original writ petition, the chronological list of events stood as follows :

Date	Particulars
April 2007	Memorandum of Understanding between SAIL and Jay Prakash Associates.
15.06.2007	Respondent No. 7 SAIL transferred 34.59 acres of land to Respondent No.10 M/s BJCL.
01.05.2008	Environmental Clearance was granted to Respondent No. 10 BJCL by Respondent No. 2 MoEF.
04.05.2009	Respondent No. 10 applied for building permission to the Municipal Corporation Respondent No. 6.
22.05.2009	Proposed modification was published in the local newspapers.
24.11.2009	Respondent No. 5 Jt. Director Town and Country Planning Bhilai issued notice to Respondent No.10 regarding land use modification without permission and restoration of the land.

21.01.2010	Respondent No. 8 wrote to State informing that they were not aware of green belt and regarding their non-participation in Bhilai Development Plan.
18.10.2010	NGT Act, 2010 came into effect.
03.02.2011	Impugned notification issued by the Respondent No. 1 State of Chhattisgarh.
18.02.2011	Gazette notification of impugned notification.
08.09.2011	Writ Petition (PIL) No. 5467/2011 was filed by the appellant before the High Court of Chhattisgarh at Bilaspur.
28.01.2013	The Writ Petition (PIL) 5467/2011 was transferred to the NGT (PB), New Delhi by the High Court of Chhattisgarh at Bilaspur.

19. The respondent, on the threshold, have raised their preliminary objections on the question of maintainability of the appeal on limitation and jurisdiction. They have raised all the contentions as narrated above.

20. Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010 reads as follows:

"14. Tribunal to settle disputes. – (1) 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 on Schedule-I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six

months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

21. From the very reading, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement of any legal right related to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule – I. Even, if the applicant is able to satisfy the above requisites, the Tribunal can adjudicate the disputes only if it is made within a period of six months from the date on which the cause of action in such dispute first arose and the Tribunal for sufficient cause can condone the delay for a period not exceeding 60 days in making the application.

22. Admittedly, in the instant case, the environmental clearance was granted to respondent no. 10 by respondent no. 2 MOEF on 01.05.2008. The same was also published in the newspapers on 08.05.2008. The appellant has clearly averred that he came to know about the environmental clearance from the newspaper dated 08.05.2008. Thus, it would be clearly indicative of the fact of the knowledge of the appellant on 08.05.2008. The NGT Act came into force only on 18.10.2010. The appellant has not preferred any appeal against the environmental clearance under Section 11 of the NEAA Act within the period of 90 days as stipulated under that Act including the condonement of delay period. But the appellant has chosen to file Writ Petition before the High Court

of Chhattisgarh at Bilaspur only on 08.09.2011 i.e. nearly about after lapse of 01 year from the commencement of NGT Act. Though, a remedy was available under Section 11 of the NEAA Act, the appellant has not availed that remedy. The NEAA stood repealed under the NGT Act, 2010 w.e.f. 18.10.2010. A party cannot rely upon the provisions of the repealed statute after it has been repealed. If a right has been accrued under the repealed enactment, it cannot be disturbed. Even then, if any new or further step was needed to be taken under the Act that cannot be taken even if the Act is repealed.

23. The Hon'ble Apex Court in 1980 1 SCC 149 has dealt as follows

"The distinction between what is and what is not a right preserved by the provision of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for, acquiring a right. In Director of Public Works v. Ho Po Sang Lord Morris speaking for the Privy Council, observed:

"It may be, therefore, that under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On repeal, the former is preserved by the interpretation Act. The latter is not."

24. A reading of the above would clearly indicate the right of appeal granted under the repealing Act as could be seen of the NGT Act, it was restricted only

to the orders that were passed on or after 18.10.2010 and also taking up for consideration the appeal which were filed before NEAA on or before 17.10.2010. As rightly pointed out by the Learned Counsel for the respondent, the Tribunal is only a creature of the statute and could not stretch its jurisdiction what is expressly conferred by the Act and no statutory authority whether empowered by the Hon'ble Supreme Court can act or otherwise dehoarse of the statute. In the instant case, the repealed act cannot be relied upon by the appellant. If the appellant has acquired anything under the repealed enactment, it cannot be disturbed but it is not so in the instant case. If the appellant has acquired any right, the same would be protected by applying the provision of Section 6(c) of the General Clauses Act but that is not so in the instant case. In the instant case, the environmental clearance was granted on 01.05.2008 but no appeal was preferred before 18.10.2010 under NEAA Act and hence, it cannot be stated as a pending case to be decided under Section 38(5) of the NGT Act. As seen above, the appellant cannot rely upon Section 16 of the NGT Act General Clause to expand the portion of Section 16 of 38(5) of the NGT Act beyond the plain language.

25. As in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of NGT Act, one should have the cause of action which consisting of bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal.

- (a) Black's Law Dictionary defines Cause of Action as : "Cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

- (b) In "Words and Phrases", the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.
- (c) As per Halsbury Laws of England (Fourth Edition) "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action.
- (d) It is judicially settled that the cause of action, in the restricted sense, means forming the infraction of the right or the immediate occasion for the action and in the wider sense, the necessary conditions for the maintenance of the proceedings not only the alleged infraction but also the infractions coupled with the right itself.

26. It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT, New Delhi in Appeal No.01 of 2013 Ms. Medha Patkar & Others Vs. Ministry of Environment & Forest, Union of India & Others on the point of limitation :

"The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, danger of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its

entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non-compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is place in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view."

27. By employing these words the legislative intent indicating that the period of limitation would commence only from the date on which the first event constituting the cause of action for the dispute arose is explicit. This is not only an indication but also a caution that later dates on which the subsequent events arose should not be taken to account for computing the period of limitation.

28. The contention of the appellant side that the appeal was preferred only on 03.02.2011 i.e. from the date of the knowledge cannot be accepted since the words "the cause of action for such dispute first arose" employed in Section 14

of the NGT Act have there have their own legal import in view of the reasons stated above.

29. . The environmental clearance was granted to the respondent no. 10 by the respondent no. 2 on 01.05.2008 and the appellant had the knowledge about the grant of environmental clearance on 08.05.2008 but filed the writ petition before the High Court of Chhattisgarh, Bilaspur on 08.09.2011 i.e. nearly after one year after commencement of NGT Act on 18.10.2010. As rightly pointed by the respondent that it caused a doubt whether the appellant would have preferred a writ petition before the High Court of Chhattisgarh, Bilaspur in order to circumvent the legal impediment on the point of limitation.

30. Pointing to the order of transfer made by the High Court of Chhattisgarh, Bilaspur, the Learned Counsel for the appellant would submit that while transferring the present appeal, the High Court has observed that the basic challenge is environmental clearance regarding diversion of land and restoration of area and to decide the present issue. But this contention has got to be rejected in view of the order of the High Court which reads as follows :

“The basis point of challenge is the environmental clearance dated 01.05.2008. The notification for the diversion of the land as well as the order approving the construction are subsequent to it and are based on it.”

31. From the reading of the order of the High Court it would be abundantly clear that the environmental clearance was sought to be quashed and to be set aside and the notification regarding the diversion of land and restoration of area are only based on it. The contentions put forth by the appellant side that the appellant has sought for three reliefs and the main relief is restoration of the

leased out area of 34.59 acres of land to the original situation prior to the construction by the respondent no. 10. Thus, it is not directly an appeal under Section 16 but only an appeal seeking a relief under Section 15 though attractive at the first instance, do not stand the scrutiny of law. Pointing to Section 15(3) of the NGT Act, the Learned Counsel would submit that limitation for filing the appeal for restitution of the environment is 5 years from the date of which the cause of action first arose and the restoration of the green belt is covered under the provisions of the NGT Act. Apart from that Schedule – II specially states that the compensation relief could be claimed on account of any harm, damages, destruction to flora including aquatic flora, crops, vegetable, trees and orchards and Clause (K) deals with restoration on account of harm, damage of environment including pollution to soil, air, water, land or ecosystem. In the instant case, the case of the appellant is the issue of conversion of green belt for industrial purpose and the grant of environmental clearance would arise for consideration in view of the consideration of the relief and thus, the appeal is within time. This contention has got to be negated for more reasons than one. The main subject matter of challenge is the grant of environmental clearance to the respondent no. 10 by the respondent no. 2 which was done on 01.05.2008 i.e. the date when the first cause of action arose. The appellant has not availed the remedy available under the provisions of NEAA Act. Even as per the averments made by the appellant, the Director Town & country Planning, Bhilai respondent no. 5 has issued notice to respondent no. 10 regarding the land use modification without the permission, in its original condition. It is highly doubtful whether the appellant can apply and ask for restoration of land in question. The limitation of 5 years, as provided under Section 15 of the NGT Act, 2010 cannot at all

30

applied to the present of the case since someone should use an area earmarked as green for any other purpose. In the instant case, the State Government has modified the land use from green belt to industrial by exercise of statutory powers conferred on it. In other words, the land notified as industrial area by the State Government is being used by the respondent no. 10 for industrial purpose. If the relief of restoration as asked for by appellant is to be considered and granted, necessarily the validity of the act of modification of land use by the State Government of Chhattisgarh has to be gone into and examine and if to be done so, it has to be done under the provisions of Chhattisgarh Town and Country Planning Act and the said enactment is outside the seven enactments of the Schedule – I of NGT Act, 2010 and hence no doubt it would fall outside the jurisdiction of the NGT. As could be seen above, the primary question in the appeal, as pointed out by the Hon'ble High Court in its order of transfer has a legality or otherwise of the grant of the EC dated 01.05.2008 in respect of which the appellant did not avail the remedy within the stipulated time under the provisions of NEAA Act and has filed the writ petition long after the lapse of one year and the other two questions namely the conversion of the use of land and also the restoration of land to its original condition are the questions based on it and would arise consequently to the first one.

32. Apart from that the appellant has also challenged the notification dated 03.02.2011 where by the modification from the green belt to industrial purpose was made and sought to quash the same. The relief sought for by the appellant would not fall within the jurisdiction of the Tribunal since the said conversion of the land use was in exercise of the powers under Section 23(A) Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam Act, 1973. Needless to say that the

Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam Act, 1973 is not included in the seven enactments specified in the Schedule – I of the NGT Act.

33. The contention put forth by the Learned Counsel for the appellant that the respondents are taking diametrically opposite stand that when the writ petition was pending before the Hon'ble High Court of Chhattisgarh, it was submitted that the appellant had an efficacious and alternative remedy before the NGT and on transfer to the Tribunal they are putting forth an exactly opposite stand that the Tribunal has no jurisdiction to trial and since it is a matter of transfer by the constitutional Court, the Tribunal has to make an enquiry on the merit of the matter rejecting the contentions now put forth by the respondent side. This contention cannot be countenanced. When the writ petition was pending was pending before the Hon'ble High Court of Chhattisgarh, the respondent in the reply has not only stated that the appellant has an efficacious and alternative remedy before the NGT but has also specifically averred that a challenge before the Tribunal was barred by limitation and the appellant has avoided that by filing the writ petition. The Hon'ble High Court, in view of the judgment of the Hon'ble Supreme Court in Writ Petition No. 50/98 Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India has passed an order of transfer. By the said judgment in Writ Petition No. 50/98 Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India, the Hon'ble Supreme Court issued a direction that all the matters instituted after the NGT Act coming into force and which were covered under and / or in NGT Act should stand transferred and could be only instituted before the NGT. Thus, it would be quite clear that the question as to maintainability on the jurisdiction and limitation were kept open to be decided by the Tribunal. Thus, the contentions put forth by the Learned

Counsel for the appellant that since, the Writ Petition was transferred to the Tribunal question of maintainability does not arise for consideration cannot be countenanced.

34. It is not that the Tribunal is unmindful of the fact that the subject matter in question related to environment which is of serious concern and the Tribunal is specially constituted to deal with all environment disputes and dismissing the appeal as not maintainable would appear to be unreasonable. But the Tribunal is helpless, being a statutory body, the Tribunal is bound by the language of the statute. Hence, in view of the discussions made above, the Tribunal has no option than to dismiss the appeal not maintainable as barred by time and one outside the jurisdiction of the Tribunal. Hence, the appeal is dismissed accordingly. No order as to cost.

(Mr. Justice M.Chockalingam)
Judicial Member

(Dr. Ajay A. Deshpande)
Expert Member

Central Zonal Bench, Bhopal
2nd August, 2013

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
CENTRAL ZONE, BHOPAL

O.A. NO.24/2016 (CZ)

IN THE MATTER OF :-

PETITIONER : Kishore Deepak Kodwani

VS.

RESPONDENTS : State of M.P. & Ors.

And

**APPLICANT/
INTERVENER**

High Court of Madhya Pradesh
Through Registrar General,
Jabalpur (M.P.)

AFFIDAVIT

I, Bhupendra Kumar Nigam, son of Shri Raghubir Prasad Nigam, aged about 54 years, Registrar (Admn.), High Court of M.P., Jabalpur, do hereby take oath and state as under:-

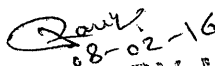
1. That I am Registrar (Admn.) in the High Court of M.P., posted at Jabalpur. I have been authorized to act and appear in the aforesaid matter on behalf of the High Court of M.P. I am well conversant with the facts of the case.
2. That the for dismissal of the present application of the petitioner for the stay, at the admission stage application has been drafted and filed in accordance with my instructions. I have read and understood the contents thereof. I state that the contents of the intervention application are true to the information as gathered from the office records and believed to be true.

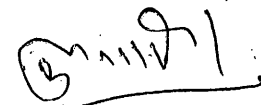

DEPONENT

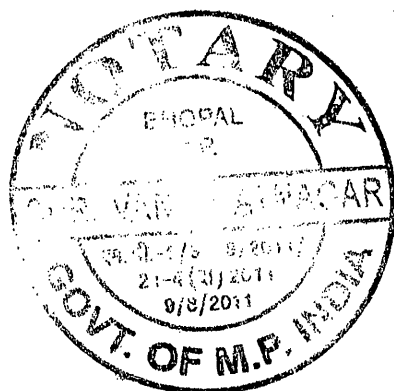
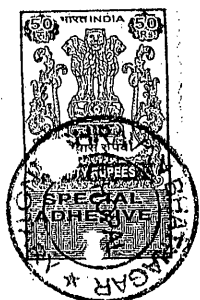
VERIFICATION

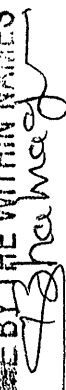
I, Bhupendra Kumar Nigam, abovenamed deponent, do hereby verify that the contents of paras 1 and 2 above stated are true to my personal knowledge.

Verified and signed on this ___ day of February, 2016, at Jabalpur.


IDENTIFIED BY ME
NAME: Ravindra Kumar Verma
B-159, Adarsh Nagar,





SOLEMNLY AFFIRMED BEFORE
ME BY THE WITHIN NAMES

08/2/16
STRAVAN BHATNAGAR
NOTARY
BHOPAL (M.P.) INDIA

No. 50
Date 08/2/16