

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION NO.14 (THC) OF 2013 (WZ)
With
APPLICATION NO.16 (THC) OF 2013 (WZ)**

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:

GOA FOUNDATION,

A society registered under the Societies Registration Act, 1960, through its Secretary, Dr. Claude Alvares, and having its registered Office at Room 7, Above Mapusa Clinic, Mapusa, Goa.

.....APPLICANT

And

1) STATE OF GOA

Through Secretary; Forests,
Secretariat, Porvorim, Goa.

2) SECRETARY,

Ministry of Environment & Forests,
Paryavaran Bhavan, C.G.O. Complex
Lodhi Road, New Delhi-110 003.

3) THE FOREST SURVEY OF INDIA,

Through its DG, Kaulagarh Road,
Dehra Dun-248195.

- 4) THE DEPARTMENT OF FORESTS,**
Government of Goa, Through Principal
Chief Conservator of Forests, Panaji, Goa.
- 5) SOUTH GOA DISTRICT FOREST COMMITTEE,**
Through Member Secretary,
Sub Divisional Forest Office,
Quepem, Goa.
- 6) NORTH GOA DISTRICT FOREST COMMITTEE,**
Through Member Secretary,
Sub Divisional Forest Office,
Ponda, Goa.
- 7) COLLECTOR (NORTH),**
Collectorate Building,
Panaji, Goa.
- 8) COLLECTOR (SOUTH),**
Collectorate building,
Margao, Goa.

RESPONDENTS

Counsel for Applicant

Norma Avlares, SupriyaDangareAdv

Counsel for Respondent(s):

A.N.S.Nadkarni, Advocate General,
a/wDattaprasadLawande, PradoshDangui,
PurnaM.Bhandari, Advs for Respondent Nos. 1,4.
MsShwetaBusar Adv for Respondent No.2.
F.M. Mesquita Adv forRespondent Nos.5 to 8.
Pramod Bendre Adv for Respondent Nos.7,8.

APPLICATION NO. 16(THC) OF 2013 (WZ)

B E T W E E N:

GOA FOUNDATION,

A society registered under the Societies Registration Act, 1960, through its Secretary, Dr. Claude Alvares, and having its registered Office at Room 7, Above Mapusa Clinic, Mapusa, Goa.

.....**APPLICANT**

And

1) STATE OF GOA

Through its Chief Secretary;
Government of Goa,
Secretariat, Porvorim, Goa.

2) CHIEF CONSERVATOR OF FORESTS,

Forest Department, Gomantak Maratha Mandir
Panaji, Goa.

3) THE SECRETARY,

Ministry of Environment & Forests,
Paryavaran Bhavan, C.G.O. Complex
Lodhi Road, New Delhi-110 003.

4) THE TREE OFFICER,

Office of the DCF, North Goa,
Ponda, Goa.

5) THE TREE OFFICER,

Office of the DCF, South Goa,
Margao, Goa.

6) THE COLLECTOR, NORTH GOA,

North Goa Collectorate, Panaji, Goa.

7) THE COLLECTOR, SOUTH GOA,

South Goa Collectorate, Margao, Goa.

8) THE DIRECTOR OF MINES

Department of Mines & Geology,
Udyog Bhavan, Panaji, Goa.

RESPONDENTS

Counsel for Applicant

Norma Avlares, Supriya Dangare Advs

Counsel for Respondent(s):

A.N.S. Nadkarni, Advocate General,
a/w Dattaprasad Lawande, Pradosh Dangu,
Purna M. Bhandari, Advs for Respondent Nos. 1,4.
Ms Shweta Busar Adv for Respondent No.2.
F.M. Mesquita Adv for Respondent Nos.5 to 8.
Pramod Bendre Adv for Respondent Nos.7,8.

Date: 30th July, 2014

COMMON JUDGMENT

1. By this common Judgment, we shall dispose of both these Applications, which have raised related and identical dispute regarding the issue of setting the criteria for identification of forests in the State of Goa and implementation thereof.

2. Both these Application No.14 (THC) of 2013 and Applications No.16 (THC) of 2013, have been registered in the Tribunal upon transfer of Original Writ Petition No.495 of 2010 and Original Writ Petition No.334 of 2006 respectively, by the Hon'ble High Court of Bombay, Goa Bench, by its order dated 17th October, 2013. While Application No.14 (THC) of 2013, basically challenges the criteria (specifically no. 2 and 3) that are applied in Goa for identification of private forest, the Applicant in the Application No.16 (THC) of 2013, prays for identification of degraded forest lands and early completion of identification of private forests. Considering above position, both the matters are tagged together for hearing and also, for adjudication purpose.

3. Both these Applications, have been filed by Goa Foundation, which is a society registered under the Societies Registration Act, 1960. The Applicants by present Applications claimed to raise 'substantial questions relating to environment', as defined in NGT Act, 2010, connected with the implementation of the Forest (Conservation) Act, 1980, in the State of Goa and enforcement of directives of the Hon'ble Supreme Court in Godavarman's case. The Applicants submit that they have filed present Applications for pursuing the issue of identification and demarcation of private forests in the State of Goa, as a result of the order of Hon'ble Supreme Court of India in Writ Petition No.202 of

1995 (Godavarman's case) dated 12.12.1996. The Applicants submit that as per the order dated 12.12.1996, the State Governments were required to identify and demarcate both the forest areas and also, degraded forest areas. The Applicants submit that subsequent to the said order, the State Govt. of Goa, had set up two consecutive Expert Committees in 1997 and 2000 to identify the private forest in the State of Goa on private and revenue lands. These two (2) Committees relied on certain guidelines, which were prepared by Goa Forest department in 1991, prior to the order in Godavarman's case. These guidelines and criteria were issued as a result of compliance of the Judgment of Hon'ble High Court of Bombay, Goa Bench, in the matter of *ShivanandSalvekar v. Tree Officer* (WP No.162 of 1987), declaring that the Forest (Conservation) Act, 1980, is also applied to the 'forests' on the private and revenue lands. The criteria adopted by these Committees to identify the areas as a 'forest' would be as follows:

- (a) 75% of tree composition should be the forestry species,
- (b) The area should be contiguous to the Govt. forest and if in isolation, the minimum area should be 5 Ha,
- (c) Canopy density should not be less than 0.4.

4. The Applicants submit that there is no basis for criteria No.3, i.e. related to canopy density, as there are

several forest areas, which are presently degraded and having canopy density of less than 0.4, but which were originally dense or medium dense forests and which must accordingly be identified as forests. It is submitted by the Applicants that such lands cannot be unilaterally diverted to non-forestry purpose, except with prior approval under the Forest (Conservation) Act, 1980. In fact, if the criteria No.3, was accepted, there would be no way of complying the directions given in terms of reference No.2 of the Hon'ble Supreme Court order dated 12.12.1996. It is also submission of the Applicants that the Forest (Conservation) Act, 1980, is a Central Legislation and, therefore, any criteria used for defining any land as 'forest' or 'non-forest', would have to be approved by the Central Govt. i.e. the Respondent No.2, and there is no document on record to show these criteria are approved by the Central Govt. i.e. the Respondent No.2. Neither, it appeared from available records that these criteria are accorded the approval by the Goa Government.

5. The Applicants submit that on 28th March 2008, the Hon'ble Supreme Court of India, decided the matters relating to Net Present Value (NPV) and compensatory afforestation costs in Writ Petition No.202 of 1995, wherein, the Report submitted by the Central Empowered Committee (CEC), titled 'Supplementary Report of CEC in IA No.826, and in IA No.566, regarding Calculation of Net Present

Value (NPV), payable on Loss of Forest lands of different types in Non-forest purpose” has been relied on. Applicant submits that the Hon’ble Supreme Court has accepted the CEC’s recommendations on certain economic values, proposed for calculating Net Present Value (NPV) and costs for compensatory afforestation (CA), involved in diversion of dense, moderate dense and open forest. The Applicants submit that as per the Forest Survey of India, the Respondent No.3, forest vegetation in the country falls specifically in three (3) mutually inclusive canopy density classes:

- (1)** Very dense forest (with crown density) 0.7 to 1.
- (2)** Moderate dense forest (with crown density) 0.4 to 0.7,
- (3)** Open forest (with crown density) 0.1 to 0.4

6. It is, therefore, the argument of the Applicants that for the purpose of implementation of the Forest (Conservation) Act, all the Authorities including the Hon’ble Supreme Court of India, have clearly accepted that the areas of natural vegetation, having tree canopy density varying anywhere between 0.1 to 0.4, are to be considered as forest for the purpose of applicability of the Forest (Conservation) Act, 1980 and thereafter determination of NPV and CA. The Applicants further submit that this aspect of enlarging the scope of criteria No.3, is essential and important, as latest report of the Forest Survey of India,

2009, shows that the category of open forest (crown density of 0.1 to 0.4) is almost the same in extent, as both the categories of very dense forest and moderate dense forests are put together.

7. The Applicants further submit that criteria of minimum 5 Ha, area, is also defeating the purpose and the mandate of the Forest (Conservation) Act, 1980 and also, the order of the Hon'ble Supreme Court in Godavarman's case, where it was directed that all the forests are to be protected as per the provisions of the Forest (Conservation) Act, 1980. The Applicants further submit that FSI in its affidavit dated 23rd March, 2011, submitted that it defines forest cover as being all lands, more than 1 Hain area, with a tree canopy density of more than 10%, irrespective of ownership and legal status. Such lands may not necessarily be recorded as forest areas. It also includes 'Orchards, Bamboos, Palm' and, therefore, the Applicant has sought following reliefs in the Application No.14(THC)/2013:

- (a)** For an order quashing the criteria Nos.2 and 3 of the Forest guidelines/criteria and the order of the Respondent No.1, if any, approving the same.

8. In the Application No.16 (THC)/2013, the Applicant submits that in aforesaid Godavarman's case, the Hon'ble Supreme Court had issued various directions, vide its order dated 12.12.1996. Pursuant to these orders, Goa state

government appointed a Committee headed by Shri. S.M.Sawant, in January, 1997 to carry out the survey of forest lands in Goa and submit the report. The Committee adopted above referred criteria for identification of forests and in its interim report indicated that there were approximately 256 sq km of private forests in Goa. However, in final report submitted in 1999, only 47 sq km of private forest was identified. Thereafter, in September, 2000, Goa Govt. appointed another Committee, headed by Dr. H. Karpurkar, to carry out the work. This Committee submitted final report on 12.12.2002 and identified additional 20 Sq. Km of private forest lands. Thus, total 67 sq. km of private forests were identified by both the Committees. Karpurkar Committee also stated in its Report that process of identification of forest is not complete and this exercise needs to be continued for some more time, in order to give full effect to the orders of the Apex Court. Thus, both the Committees were unable to complete the task and hence, there are several areas of the forest, which are left out of both the Committee Reports.

9. The Applicant has already obtained orders from the Hon'ble High Court, disallowing any development on 67 sq km of private forest identified by both the Expert Committees. The Hon'ble High Court has also directed the forest department to demarcate such Forest lands on

survey plans and maps, with the physical limits of private forest areas, so identified by these Committees.

10. The Applicant further submits that inspite of best efforts of both these Committees, identification of private forest is not complete in the State of Goa, which is further leading to degradation of such unidentified forest areas. The Applicant has mentioned some cases where such delay in identification and demarcation of private forest areas, is leading to degradation of forest by illegal cutting of trees and diversion of land-use.

11. The Applicant, therefore, submits that there is an urgent necessity that exercise of identification of private forest be completed and not allow its degradation, on the ground that the relevant survey numbers are not officially identified as 'Forest', as such in Expert Committee Reports. The complete identification of private forest in Goa, will also fulfill the directions of the Hon'ble Supreme Court order dated 12.12.1996.

12. The Applicant further submits that on careful reading of the order of Hon'ble Apex Court, dated 12.12.1996, the Hon'ble Court has directed the State Govt. to:

(I) Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified

under, any law, and irrespective of ,the ownership of the land of such forest;

(ii) Identify the areas which were earlier forest, but stand degraded, denuded, cleared and,

(iii) to identify the areas covered by plantations.

It is grievance of the Applicant that both the Committee Reports and also, subsequent committees appointed by State government, have not identified the areas, which were earlier forests but now stand degraded, denuded or cleared, as per the directions of the Hon'ble Supreme Court. The Applicant submits that these Committees have not dealt with this issue or even formulated suitable criteria/parameters or framework for notifying such degraded forest areas and, therefore, the Applicant has prayed for following prayers in the Application No.16 (THC)/2013:

- (a)** For an order directing the Govt. of Goa to complete the process of identification of private forest in the State, within a time bound period in terms of Apex Court's order dated 12.12.1996 and report compliance;
- (b)** For an order directing the Govt. of Goato complete the process of notifying degraded forest within the State i.e. the areas which were earlier forest but stand degraded, denuded or

cleared, in terms of Apex Court's order dated 12.12.1996 and report compliance.

13. In Application 14/2013, the forest department and its officers and the Committees of the Goa Govt. have been made the Respondent Nos.1,4,5 and 6, while the Forest Survey of India, is the Respondent No.3. The Collector of North Goa and the Collector of South Goa, are the Respondent Nos. 7 and 8, respectively. Ministry of Environment and Forest, Government of India is Respondent no.2. This array of Respondents is adopted in presenting the facts in this Judgement.

14. The Forest Department, Govt. of Goa, has filed the affidavits from time to time and has opposed both the Applications. In the affidavit dated 14th September, 2010, the RespondentNo.2, the Forest Department, Govt. of Goa, submits that in the case of *Shivan and Salgaonkar Vs. Tree Officer* (WP No.162 of 1987), the Hon'ble High Court of Bombay, Goa Bench, in the Judgment delivered on 27th November, 1990, held that: "since the term 'forest', is not defined in the Forest (Conservation) Act, the term has to be taken as per its dictionary meaning". Pursuance to this Judgment, the forest department framed guidelines in 1991, for identifying the forest in private properties. These guidelines were submitted to the Ministry of Environment (MoEF) Govt. of India, on 4th October, 1991, for their response, which are as under :

Criteria for application of Forest (Conservation) Act, 1980 to private forests.

- i) Extent of area: Long term viability of a piece of forest land is an important consideration. Obviously, very small patches of forest cannot be viable in the long run from conservation Point of view. Therefore, a minimum extent of area will have to be determined to which the Forest (Cons.) Act, 1980 would be applicable in private and revenue areas not recorded as 'forest'. I propose that this area should be at least 5 hectares. It is not worthy that the Forest (Cons.) Act, 1980 and guidelines made there under do not prescribe any such minimum area for application of the Act.
- ii) Proximity and/or contiguity: The proximity of the private forests concerned to a larger forest area and / or its contiguity with the later area should also be an important aspect to consider while examining such areas.
- iii) Composition of crop: It is important to prescribe minimum standards in terms of crop composition in order to distinguish forest species from horticultural species. This is particularly relevant in State like Goa where occurrence of large number of cashew, jackfruit and coconut trees in private areas is a common feature. We may perhaps prescribe that at least 75 of the crop should comprise of forest species.
- iv) Crown density: It would not be meaningful to apply the Forest (Cons.) Act, 1980 to degraded and open areas under private ownership. Therefore, a minimum crown density of 40% may be adopted as a standard assessing the applicability of the Act in Such private and revenue areas which are not recorded as 'forests' in the land records.

In addition to above, other aspects such as proximity to natural water sources, terrain and slope, presence of rare or endemic species etc. will also be taken into account when dealing with such forest areas not recorded as 'forests' in the land records

It is necessary to establish these guidelines because of the peculiar situation of land records in Goa which do not have any classification of land as 'forest'. Consequently even forest land under private ownership is not described as 'forest' in the land records (Form 1& XIV). We have already moved the Revenue authorities to make this change in entries in the land records wherever the land is under forest, but until then it is necessary evolve a set of guidelines in view of the High Court judgment

applying the Forest (Cons.) Act, 1980 to such areas. Once the change in land records is made, provisions of the Forest (Cons.) Act, 1980 will apply automatically.

15. The forest department further submits that pursuant to the orders of the Hon'ble Supreme Court, dated 12.12.1996, the State Govt. had appointed Sawant Committee for the purpose of identification of forest lands in the State of Goa on 24th January 1997, which submitted its report on 8th December 1999. This committee was given following task;

- i. To identify areas which are "Forest" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of ownership of land of such forest;
- ii. To identify areas which were earlier forests but stand degraded, denuded, or cleared.

It is also submitted that since no cut-off was given for such tasks, committee decided 1980, year in which Forest Act was promulgated, to be the benchmark for government forest lands. Subsequently, another Expert Committee was appointed on 4th September, 2000 for further identification of private forest, also submitted its report on 16.2.2002. Both these Committees adopted following criteria for classification of private forests.

- (a) 75% of tree composition should be the forestry species,

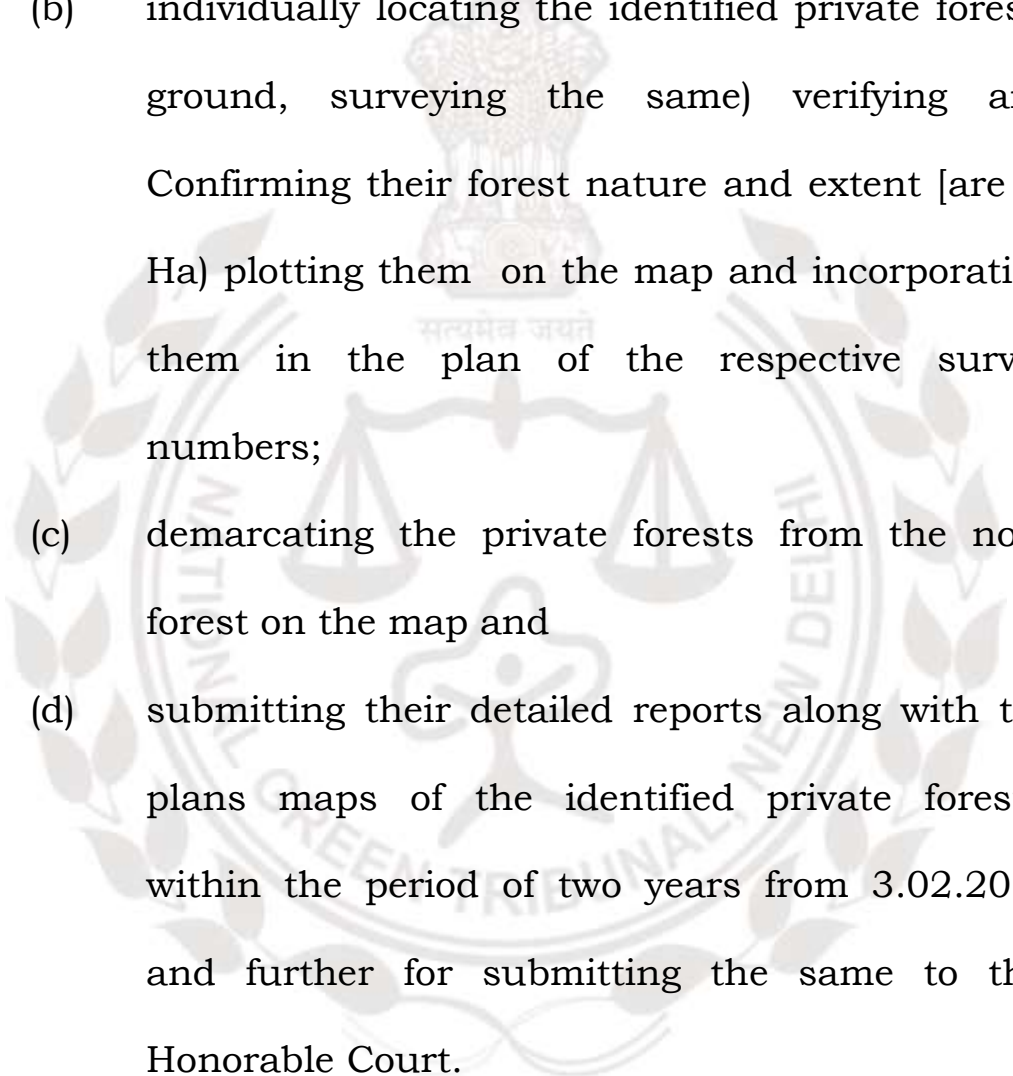
(b) The area should be contiguous to the Govt. forest and if in isolation, the minimum area should be 5 Ha,

(c) Canopy density should not be less than 0.4.

16. Respondents further submit that the Sawant Committee has already obtained data on clearings and diversion made on Government forest lands for various purposes from 1980 and identified that total 13.0798 Ha of forest land has been diverted for various purposes. Hence it is the claim of Respondents that the expert committees have already considered all aspects of ApexCourt direction dated 12.12.96.

17. It is submission of the Respondents that since the Petitioner is challenging the criteria adopted for identification of private forest, relying upon the orders of the Hon'ble Supreme Court in Godavarman case, the Applicants ought to have approached to the Hon'ble Supreme Court of India.

18. The forest department in its further affidavit dated 6th July, 2010, submits that the State Govt. has specifically constituted two (2) Committees; one for North Goa and another for South Goa, for the purpose of identification of balance areas of private forests in the State, which were not covered by Sawant Committee and Karapurkar Committee. The terms of reference for these Committees are as under:

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- (a) identifying the balance areas of private forests in North Goa District and South Goa District respectively in the State that have not been covered by the Saw ant Committee Report and the Karapurkar Committee Report;
 - (b) individually locating the identified private forests ground, surveying the same) verifying and Confirming their forest nature and extent [are in Ha) plotting them on the map and incorporating them in the plan of the respective survey numbers;
 - (c) demarcating the private forests from the non-forest on the map and
 - (d) submitting their detailed reports along with the plans maps of the identified private forests, within the period of two years from 3.02.2010 and further for submitting the same to this Honorable Court.

19. It is the case of Respondent – Forest Department, Govt. of Goa that the state has already defined the forest identification criteria based on the scientific basis considering various aspects as a policy decision, and also, these two expert Committees, are functioning effectively and the work of identification of private forest area, is being carried out expeditiously and considering the above, the Respondents opposed both these Applications.

20. The Ministry of Environment (MoEF), Govt. of India, filed its affidavit on 1st April, 2014, on specific order of this Tribunal dated 5.2.2014, asking MoEF to clarify its stand as regards 'criteria' which is to be applied for identification of the forest and what are the guidelines, so fixed by the Authority. The Respondent No.2, submits that the Hon'ble Supreme Court of India, in its order dated 12.12.1996, in Godavarman case, had issued directions to each State Govt. to constitute Expert Committee for identifying the forest areas. Subsequently, the Hon'ble Supreme Court in the Judgment dated 6th July, 2011, in Interlocutory Application No.1868/2007, in W.P (Civil) No.202 of 1995, in the matter of T.N.Godavarman, inter alia, directed that exercise undertaken by each State/Union Territory Govt. in compliance of the order dated 12.12.1996, wherein inter-alia, each State Govt. was directed to constitute an Expert Committee to identify the areas which are 'forest', irrespective of whether they are so notified, recognized, or classified under any law, and irrespective of land of such 'forest' and the areas, which were earlier forests, but stand degraded, denuded and cleared, shall be culminated in preparation of Geo- referenced district forest maps, containing the details of location and boundary of each plot of land, that may be defined as 'forest' for the purpose of Forest (Conservation) Act, 1980. The Hon'ble Supreme Court in Lafarge Judgment directed that the MoEF will

prepare a comprehensive policy for inspection, verification and monitoring and overall procedure related to grant of Forest Clearance (FC) and identification of forest in consolidation with States. The Respondent No.2 MoEF further submits that the MoEF in view of the above order of Hon'ble Supreme Court, is preparing a comprehensive policy for inspection, verification and monitoring and overall procedure relating to grant of FCs and identification of forests in consultation with the States/U.Ts and various stakeholders. As per submission of the Respondent No.2, this process is likely to take some more time, and only after finalization of such comprehensive policy, the Ministry will be in a position to put forth its stand as regards criteria, which is to be applied for identification of forests and further pleaded for sufficient time to place the stand of Ministry before the Tribunal.

21. The Forest Survey of India (FSI), i.e. the Respondent No.3, filed affidavit dated 23rd March, 2011 and has submitted that the FSI, has mandate to conduct survey and assessment of the Forest resources in the country. It is further submitted that India's States of Forest Report is published by the Respondent No.3, and in the said report forest cover is defined being of lands more than 1Ha in area, with tree canopy density of more than 10%, irrespective of ownership and legal status. Such lands may not necessarily

be recorded as forest areas. It also includes the orchards, Bamboo and Palm.

22. It is admitted by the Respondents that the exercise of the Forest Survey of India, inter alia, includes carrying out of the assessment of forest cover of the entire country periodically and classification of the same in the pre-defined density classes. The Respondents submit that since 2005. The Respondents are categorizing the assets of forest cover in three (3) classes as under:

- (1) Very dense forest (with crown density) 0.7 to 1.
- (2) Moderate dense forest (with crown density) 0.4 to 0.7,
- (3) Open forest (with crown density) 0.1 to 0.4

It is the therefore the stand of FSI that they are merely classifying the vegetated areas in three forest categories.

23. The forest department, Govt. of Goa, further filed an affidavit on 21st August, 2012, and provided a summary of various petitions filed before the Hon'ble High Court by the present Applicants along with the relief sought and the interim relief granted, highlighting the various legal matters before the High Court and Apex court related to issues raised in the Applications. The Respondents submit the process of demarcating in the private forest on the site, as identified by Sawant and Karapurkar Committees. In this process, identification team would first visually assess

fulfillment of the criteria in a prospective land, then confirm extent of forest expanse through the land surveyed, then verify the fulfillment of other criteria and then conclude its identification, i.e. whether it is a private forest or not? It is submission of the Respondents that the reports of the Forest Survey of India (FSI), indicate in general the vegetation spread/area, category wise, over a State and it can no way be construed as identification criteria for forest lands. The criteria adopted by FSI have not been approved either by the State or the Central Govt. and findings of the reports by FSI are used for suitable guidance in planning afforestation activities. The Govt. of Goa has also considered the Green India Mission, which principally envisages high reduction of carbon dioxide from the atmosphere, mainly by creating vast tree-stands and by protecting already existing once, mainly on government lands, in a time bound manner by involving stake holders. The main document mentions only encouraging private individuals and their groups to join hands in achieving the mission goal and it does not suggest compulsory use of privately owned lands for achieving the target and objectives. The Green India Mission is for betterment of environment rather than, enforceable statutory directives. The affidavit further mentions that the State of Goa has considered various aspects including reducing extent of area further to minimum of 1 Ha and reducing the crown density to minimum 10% and found

that that would lead to including many more areas of petty land holders, thus, depriving them of their right to use their lands for non-forest purpose and therefore, the Govt. has reconsidered the entire matter in totality and has arrived at a conclusion that any change in the present criteria to be adopted for identification of private forests, is neither practicable nor ecologically or economically viable. Therefore, the State Govt. and the forest department have decided to continue with the existing criteria, which are being based on the recommendations of Sawant and Karapurkar Committees.

24. Considering rival pleadings and also submissions of learned Counsel for the parties, following issues arise for adjudication of the present Applications.

1. Whether the Tribunal has jurisdiction to consider and alter or newly fix the forest identification criteria?
2. Whether the forest identification criteria set out by the Govt. of Goa, needs modification, as prayed in the Applications?
3. Whether the Tribunal can issue directions for expediting forest identification and demarcation process, as prayed in the Applications?
4. Whether the Applications are by barred limitation?

25. We have gone through the submissions made by contesting parties and it is noted that the forest department has initially taken initiative to formulate the criteria for identification of private forest, as per the directions issued by the Hon'ble High Court, Panaji Bench in Writ Petition No.162 of 1987, in the matter of *Sh. Sadanand Salgaonkar v. State of Goa*. The Sawant Committee constituted by Govt. of Goa to identify the areas which are forests came out with the criteria as under :

- (i) all the area contiguous to Govt. forest having 75% of forest tree species, composition with 40% canopy density will be considered as 'forest' , irrespective of the size.
- (ii) In isolation the minimum area besides 40%, canopy density covered and 75% canopy density, minimum area will also be considered and it should not be less than 5 Ha.

26. The Sawant Committee also decided that the year 1980 to be a benchmark for the Govt. forest lands for assessing degradation, denudation or clearing of the forests. It is also observed that State of Goa, has worked on this criteria and the reports of two (2) Committees, i.e. Sawant and Karapurkar were finalized and submitted before the Apex Court. However, as both these Committees could not complete the work the State Govt. in 2010 has formed two (2) separate Committees one for North Goa and another for

South Goa, which are functional. These Committees are also working for forest identification criteria for completion of their mandate.

27. Advancing her argument, learned Advocate Mrs. Norma Alvares, relied upon the order of Hon'ble Supreme Court dated 20th March, 2008, wherein directions were issued regarding NPV of the forest. She submits that this Judgment endorses monetary value involved in diversion of the forest, besides necessity of forest conservation, as per 1996 order, considering holistic sustainable development. This Judgment relies on and accepts recommendations of Kanchan Chopra Committee, which has considered 10% canopy density for diverting forest. She submits that when order of the Hon'ble Supreme Court of 1996, is read in conjunction with judgment of 2008, it is clear that the Hon'ble Supreme Court is of conscious opinion that irrespective of categorization and classification, the forest areas needs to be protected and the Hon'ble Supreme Court made it clear that not only good forest is to be protected but all types of forest, including open/degraded forest, needs to be identified and protected and therefore, it is contention of learned Advocate that until open forest is not identified, as directed in the order of the Hon'ble Supreme Court, this will be violation of directions of the Hon'ble Supreme Court. She also highlighted that the international organizations like the Food and Agricultural

Organization (FAO), adopts the criteria of 0.5 Ha for identification of forest, whereas FSI adopts 1Ha. She further submits that State of Goa has finalized the criteria of 5Ha and 10% canopy density based on certain evaluation criteria, like not worthy, not meaningful, not viable etc. as reflected in the communication sent by State government to MoEF in 1991, which scientifically and rationally cannot be accepted. She further submits that the present criteria are finalized in 1991 by the Goa State, however, the order of the Hon'ble Supreme Court dated 12.12.1996, identifying forest and also identifying the areas, which were earlier forest but stand degraded, denuded or cleared. It is her claim that the State of Goa should have formulated revised criteria for identification of forest based on specific directions of the Hon'ble Supreme Court in 1996. Moreover, the directions of 2008, are also very clear, regarding applicability of NPV for forest, having more than 0.1 canopy density and therefore, present criteria is not in compliance with the directions of the Hon'ble Supreme Court and there is need that this Tribunal shall direct the State Government to adopt criteria for forest identification of more than 0.1 canopy density and minimum area of 1Ha.

28. Learned Advocate General Shri A.N.S. Nadkarni, representing State of Goa while opposing the Applications submitted that the State Government had formed two Expert Committees, namely Sawant and karapurkar

committee's, to identify private forest areas in compliance of the orders of the Apex court in case of TN Godavarman Vs. Union of India. These Committee adopted and relied upon the state specific criteria for identification of forest which was evolved, in 1991, based on scientific inputs and also, socio-economic and topographical considerations which are unique to the State of Goa. Both the Savant and Karapurkar Committee reports are being examined by the Apex Court. He also submitted that the Hon'ble Supreme Court has been appraised about the private forest identification criteria adopted not only by Goa State but also by other states too, from time to time, through the progress reports. He also mentions the judgment rendered by the Hon'ble Supreme Court on 17/9/2003 in the matter of "**Tata Housing Vrs. State**", wherein an isolated case decided by the Expert Committee in difference to this existing criteria, was struck down by the Hon'ble Supreme Court. The learned Advocate General further submitted that though Hon'ble Supreme Court has referred to the submissions of the F.S.I. and also the CEC in the matter decided related to Net Present Value (NPV), yet, the Hon'ble Supreme Court has only referred to these reports and has not laid down any ratio or issued directions in this regard. He submits that both CEC and F.S.I. are not the competent authorities for deciding the forest identification criteria. Had that been the case, the entire country would have required

adopting the same criteria, which is not the case. He further submits that the State of Goa has unique geographical setting and the same have already been mentioned in the judgment rendered by the Hon'ble Supreme Court in Goa Foundation matter dated 21st April 2014 in W.P. No.435 of 2012 which are as under :

- (i) The State of Goa is the 3rd smallest State in the Union; with a total geographical area of only 3,702 square metres; and out of that, an area of 1,440 square metres is under 'Forest' (protected/reserved/private) which is almost about 38 % of the total geographical area;*
- (ii) Out of the said area under 'Forest' nearly 62 % i.e. 75.35 square metres has been declared as 'National Park', and/or 'Wildlife Sanctuary'.*
- (iii) An area of approximately or more than 70 square kilometres falls under the 'Coastal Regulation Zone'(CRZ). Indeed, the CRZ runs into 106 kms. of the Coastal Belt of the State of Goa.*
- (iv) In fact, the total land mass available to the State of Goa, free from various restrictions, would further be reduced by 196.80 square kilometres i.e. upto 5.32 % on account of Rivers, Lakes and other Water Bodies;*

(v) *Indeed, approximately 40 % of the land is under agriculture which the Government has decided not to be diverted under any circumstances.*

He, therefore, strongly argued that any forest identification criteria needs to be reasonable, implementable and socially acceptable and then only the enforcement can be effective and therefore, it is the contention of the learned Advocate General that deciding the forest identification criteria is a policy decision within the domain of the State Government and the State Government has rightly finalized the criteria in May 1991, considering various aspects and there is no need to revisit this criteria. He also submitted that the state has taken a decision to continue with these criteria subsequently also, and an affidavit has also been filed in this regard. He also raised issue of Jurisdiction and Limitation of the Tribunal as this is a policy matter and at the same time, the criteria set out in 1991 are challenged through this Application/Petition besides there are some other PILs which have raised these issues earlier. It is his submission that this is a case where the Applicants are trying to get orders from this Tribunal interpreting the orders of Apex court, it would therefore be more appropriate for the Applicants to approach the Hon'ble Supreme Court to get clarifications/orders etc. He also submits that it will also be practically impossible and also, improper to

consider any revision in the criteria at this time, as much work has already been done for identification, and any change will create a total confusion leading to social and other issues. He also agrees that considerable time has been spent to fully comply with the Apex court orders dated 12.12.1996 to identify the forest, but his contention is that the entire process is so scientific and also, involves rights of the people and hence, utmost care needs to be taken in the entire process of identification and demarcation. He further submits that the state is committed to complete the remaining areas of identification and is supporting the expert committees by providing the necessary infrastructure and manpower. He therefore opposes both the Applications and urged to dismiss them.

29. Responding this argument, Learned Counsel for Applicants would submit that the Apex Court order of 2008 is very clear and stipulate that NPV is payable even for forest areas with 0.1 to 0.4 canopy cover. She submits that in Tata Power case the , Apex court has not approved the criteria, but only struck down second revised criteria, only based on procedural lapses and also, lack of consistent approach by the committee.

30. We may note that subsequent to the orders of Hon'ble Supreme Court dated 12.12.1996, each State Govt. was mandated to form an Expert Committee for identification of forest areas. Perusal of orders of the

Hon'ble Supreme Court show that identification criteria, though specifically not enumerated, the Hon'ble Supreme Court enlisted the task assigned to such Expert Committees, which are reproduced as below:

(I) Each State Government should constitute within one month an Expert Committee to:

- (i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under, any law, and irrespective of , the ownership of the land of such forest;
- (ii) identify areas which were earlier forests but stand degraded (denuded or cleared; and
- (iii) identify areas covered "by" plantation trees" belonging to' the Government and ongoing those belonging to private persons.'

31. The Applicants have relied on Judgment of the Hon'ble Supreme Court dated 20th March, 2008, related to NPV. It is observed that Apex Court had formed an Expert Committee to give a report on following:

- 1) To identify and define parameters (scientific biometric and social) on the basis of which each of the categories of values of forest land should be estimated.
- 2) To formulate a practical methodology applicable to different bio-geographical zones of India for estimation of the values in monetary terms in

respect of each of the above categories of forest values.

- 3) To illustratively apply this methodology to obtain actual numerical values for different forest types for each bio-geographical zone of the country.
- 4) To determine on the basis of established principles of public finance who should pay the costs of restoration and/or compensation with respect to each category of values of forest.
- 5) Which projects deserve to be exempted from payment of NPV.

32. We have gone through the report of CEC in IA No.826 and IA No.566, regarding calculation of NPV, which has been relied up on by the Applicant for justifying its prayers. The report mentions that the Forest Survey of India while undertaking forest cover mapping depicts three (3) canopy density classes viz very dense, (greater than 70% crown density), moderately dense (40-70% crown density) and open (10-40% crown density). The report further mentions "Champion and Seth" have classified the Forest of India in 16 major groups. The CEC further grouped 16 major forest types in this ecological class depending upon their ecological functions, based on experience and the judgment of experts, mentioning that it is not very rigid. Though it can be gathered that CEC went in to the details of calculation of NPV payable on use of forest land, of various

types for non-forest purposes and has also gone into details of calculation of NPV of different eco value/canopy density classes, the conclusive findings/ recommendations on identification criteria could not be produced before the Tribunal.

33. The Hon'ble Supreme Court had noted in NPV judgment of 2008 that the expert committee report contains detailed study of the relevant factors. It was found that the forest cover maps depict mainly three (3) tree canopy density classes viz; very dense, moderately dense and open. There were other classifications in the Forests of India and "Champion and Seth" have classified the forests of India into sixteen (16) major groups. The major basis of classification included the climate, the soil and the past treatment, as these factors determine the vegetation type of given locality. The Central Empowered Committee (CEC), has also classified the forest taking in view ecological roles and values of the forest and for the purpose of report 16 major forest types have been further grouped into six (6) ecological classes, depending upon their ecological functions. The Apex Court has finally ruled that *"We are of the view that NPV, now fixed is more scientific and is based on all available data. We accept the recommendations and we make it clear that NPV rate now fixed would hold good for a period of three (3) years and subject to variation after 3 years"*. It can be seen from above observations that the

Hon'ble Supreme Court has noted forest cover details given by the Forest Survey of India and also, classification of forest reported by CEC and there are no specific directions relating to identification criteria to be adopted for the identification of forest.

34. It is claim of the Respondent – State Govt. that the Hon'ble Supreme Court of India, vide order dated 10.4.2006, in Writ Petition No.202 of 1995, recorded that the State of Madhya Pradesh, is relying on two (2) criteria, i.e. a minimum of 10 HA area and 200 trees per Hectare for a land to be identified as 'forest' and vide order dated 30th November, 2007, it recorded that the State of Rajasthan, is following the criteria of minimum 5Ha area and 200 trees per Ha.

35. The Apex Court has held in ***T.N. Godavarman Thirumulpad (98) v. Union of India, (2006) 5 SCC 28, at page 32 that:*** The Government of Madhya Pradesh, of which Chhattisgarh was a part at the relevant time, issued a circular dated 13-1-1997 in compliance with the directions issued in *T.N. Godavarman (1) case* for the purpose of identification of the forest. The circular stated that according to the dictionary meaning, the term "forest" means such large areas where agriculture is not done and which is covered by trees and shrubs. It further stated that, taking a practical approach, in view of the judgment as well as the dictionary meaning of the term "forest", area

measuring 10 hectares or more having an average number of 200 trees per hectare ought to be treated as forest. Similarly, the Apex court in ***Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338, at page 358*** held that: “, there is a special law in the State of Meghalaya i.e. the United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 under which forest has been defined to mean an area in which there are twenty-five trees per acre.”

36. We have also gone through the orders of the Hon’ble Supreme Court of India dated 20th November, 2007 in T.N. Godavarman matter, wherein it is ruled that :

“The State of Rajasthan has filed this application seeking directions for declaring compact and contiguous tracts of land measuring 5 ha. and above and having 200 or more trees per ha, as “deemed forest area” and norms to be applied for making such declaration.

The C.E.C has filed its report. Earlier, the State of Rajasthan has appointed the Kapur Committee for the same and the report of the Kapur Committee is also available. The State may examine both the reports and suggest the course to be adopted and report back within six weeks. ”

37. The Hon’ble Supreme Court in the matter of Construction of Park at Noida near Okhla Bird Sanctuary. AnandArya and Another vs. UOI and Ors (2011) 1 SCC 744 has observed:

35. *Almost all the orders and judgments of this Court defining*

forestland for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon By Mr.Bhushan can be applied only to an extent and not in absolute terms. To an extent Mr.Bhushan is right in contending that a man-made forest may equally be a forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case otherwise it would lead, to highly anomalous conclusions.

36. Like in this case, Mr.Bhushan argued that the two conditions in the guidelines adopted by the State Level Expert Committee i.e. (i) atrees mean naturally grown perennial trees, and (ii) the plantation

done on public land or private land will not be identified as forest like area: were not consistent with the wide definition of forest given in the 12-12-19961 order of the Court and the project area should qualify as forest on the basis of the main parameter fixed by the Committee. If the argument of Mr.Bhushan is accepted and the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 ha or above, with the minimum density of 50 trees per hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated 12-12-19961.

38. We, therefore, find that after the orders of the Hon'ble Supreme Court dated 12.12.1996, all the States have formed Expert Committees for identification of forest and have also submitted progress reports before the Apex Court. As mentioned earlier, State of Rajasthan, has approached the Hon'ble Supreme Court with separate identification criteria. The State of Madhya Pradesh and also State of Medhalaya, have also their separate forest

identification criteria, which reports have already been submitted before the Apex Court. We have noticed that all the state's have evolved their own forest identification criteria and have already started the work in 1996-97 itself towards compliance of directions of Hon'ble Supreme Court. All these facts are part of proceeding in T.N. Godavaraman case, which is still under consideration of the Apex court. In our considered opinion, the change in the crieteria is not within our domain since the Apex Court is seized of the matter in which same issue is under consideration. And, therefore, this Tribunal is not inclined to give its opinion or finding regarding modification or otherwise identification criteria for private forest to be adopted by Goa State. And therefore the Issue mentioned at 1 is answered in "Negative".

39. The second prayer of the Applicants is related to early completion of forest identification process. It has been brought on record that out of 256 Sq. Km. potential forest areas, work related to only 67 Sq Km has been completed by two Committees. Secondly, it is claimed that two new Committees are also trying to expedite the work. When asked about time limit for completion of identification process, the officer present indicates that entire identification and demarcation process is a complex process and includes survey, investigation, public consultation and then notification with mapping. They, therefore, submit that

no such time frame can be fixed. We are surprised to note this submission. We are inclined to agree with the contention of the Applicants that delay in identification and demarcation of forest, may be resulting into illegal cutting of the trees and also, diversion of land-use in some cases, though the State Government has put embargo on issuance of 'Sanad' in some cases, where the plots are not identified till this date. It may be possible that such delay in identification and demarcation may result into tree cutting and damage to the forest. The Hon'ble Supreme Court in "Indian Council for Environment Legal Action", 1996 (5) SCC 281, has emphasized implementation of laws. When law is to be implemented, it is utmost necessary that the provisions are effectively enforced in time bound manner. And therefore, the Issue No. 3 is answered in "Affirmative". We, therefore, direct the Chief Secretary of Goa, to call a meeting of all the concerned and work out time bound action plan for early completion of forest identification and demarcation in the State of Goa, within next six (6) weeks and submit a time bound program to this Tribunal within eight (8) weeks from today. Rest of the Reliefs are denied.

40. The Applications are accordingly disposed of, without costs, with liberty to Applicants to approach Hon'ble Supreme Court regarding the forest identification criteria, if so advised.

41. While parting with the Judgment, we wish to place our appreciation of the legal assistance of by Learned Counsel Norma Alvares and Learned Advocate General Shri. A.N.S. Nadkarni, which gave immense clarity to thrash out the issues involved in these Applications.

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

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

Date: 30th July 2014.

