

IN THE HIGH COURT OF BOMBAY AT GOA.

Writ Petition NO. 321 OF 2010.

Goa Foundation and 3 othersPetitioners.

Versus

Ministry of Environment and Forests
Government of India, through Chief
Conservator of ForestRespondents.

Ms. Norma Alvares Advocate for the petitioner.

Mr. C. A. Ferreira, Assistant Solicitor General for respondent no.1.

Mr. S. Dessai, Senior Advocate with Mr. S. Naik, Advocate for
respondent no. 2.

Mr. S. S. Kantak, Advocate General, with Mr. P. Talaulikar,
Additional Government Advocate for respondent no. 3 to 8.

Mr. P. H. Parab, Advocate for respondent no.9.

**Coram:- A. S. OKA &
F. M. REIS, JJ.**

Date:- 12th August, 2010.

P.C.

We have heard learned Counsel appearing for the
Petitioners. We have heard learned Advocate General appearing for
the State Government. We have heard learned Senior Counsel
appearing for the second respondent. We have also heard learned
Counsel appearing for the ninth respondent and learned Assistant

Solicitor General of India for the first respondent.

2. The petitioners claim to have filed this petition in public Interest. The challenge in this petition is in substance to the Order of the Ministry of Environment and Forests of the Union of India to the Orders dated 30th November, 2007 and 23rd October, 2008 permitting diversion of 4.3725 hectares of forest land for enabling construction of International Cricket Stadium at Tivim Village of Bardez Taluka.

3. With a view to appreciate the submissions made, it is necessary to the challenge in the Writ petition. An acquisition of a large area of land was made under the provisions of Land Acquisition Act, 1894 for construction of an International Cricket Stadium. The Deputy Conservator of Forests of the Ministry of Environment and Forest, Government of India issued a communication dated 30th November, 2007 recording approval for diversion of 4.3725 hectares of private forest land at Tivim in North Goa District for facilitating construction of International Cricket Stadium in favour of the Director of Sport and Youth Affairs, Directorate of Sports and Youth Affairs of State of Goa. Various conditions were imposed in the said communication. The stage II approval for diversion of the forest land

for the aforesaid purposes was communicated by a letter dated 23rd October, 2008. Various terms and conditions have been incorporated in the said letter. The main condition was that the identified equivalent non-forest land proposed for compensatory afforestation shall be transferred and mutated in favour of State Forest Department. Further condition requires that the user agency shall deposit the net present value of the diverted private forest land.

4. There are various challenges in this petition. Learned Counsel appearing for the petitioners pointed out that now the affidavits filed by the respondents reveal that the user agency is not the Directorate of Sports and Youth Affairs of Government of Goa but now the user agency will be the second respondent Goa Cricket Association. The learned Counsel invited our attention to the Lease Deed dated 11th February, 2010 executed by the Government of Goa in favour of the Goa Cricket Association. The learned Counsel relied upon Forest (Conservation) Rules, 2003. The learned Counsel submitted that there is no prior permission obtained of the Union of India for creating a lease of the forest land in favour of second respondent. She pointed out that when the impugned clearances were granted by the Central Government, the State Government had not

made the Central Government aware of the fact that user agency will be the second respondent. She invited attention of the Court to the various terms and conditions incorporated in the Lease Deed and pointed out that many terms and conditions are contrary to the conditions imposed in the stage I and stage II clearances. She pointed out that the second respondent has been permitted to sublet, mortgage or transfer the land for any commercial use to any third party for raising resources for completion of the project. She pointed out that the second respondent has been permitted to construct commercial, residential facilities for their players, guests, staff, general public etc on the forest land. She submitted that the terms and conditions on the Lease are clearly contrary to the conditions imposed by the Central Government. She invited our attention to the communication dated 20th May, 2010 issued by the Deputy Conservator of Forests(Central), Ministry of Environment and Forests of the Government of India. She pointed out that by the said communication, the Government of Goa has been called upon to furnish certain information. She pointed out that the said communication requested the Goa Government to furnish the details of activities proposed on the forest land for construction of International Cricket Stadium at Tivim. She pointed out that there is

a proposal for construction of buildings on the forest land for commercial activities including malls, restaurants, hotels etc. She submitted that the communication shows that the Government of India is looking into grievances raised in the petition. She pointed out that no part of the forest land can be used by the State Government or any one else for any purpose except for construction of cricket stadium. Inviting our attention to the additional affidavit of the second respondent, she stated that the second respondent has not even admitted that a part of land acquired constitutes forest area. She invited our attention to the other challenge which is reflected from paragraphs 5 to 7 of the petition. The contention raised is that acquisition itself is contrary to the provisions of the regional plan. Learned counsel pointed out that according to the petitioners, the fourth respondent has moved a proposal to exempt acquired land from the operation of the regional plan by invoking the provisions of section 16 and 16A of Town and Country Planning Authority, 1979. She stated at present the petitioners are not pressing the challenge, as respondents have not placed on record any order passed on application for exemption.

5. We have also heard learned Advocate general, learned

Senior Counsel on behalf of the second respondent. Learned senior counsel for the second respondent has invited our attention to the affidavit-in-reply as well as additional affidavit. The submission of learned Advocate General and learned Senior Counsel for the second respondent in short is that there are no illegalities.

6. It will be necessary to consider the undertaking recorded by the second respondent in their first reply in paragraph 13 which reads thus:-

“The Goa Cricket Association undertakes to this Honourable Court that they shall commence construction of the proposed project in the acquired land in stages and after obtaining all necessary permissions from all the concerned authorities. Presently no construction in the acquired land is commenced.”

There is an additional affidavit filed by the second respondent. In paragraphs 2 and 3 of the said affidavit which reads thus:-

“A part of the remaining forest area shall be used for ground parking and practice pitches. The remaining part of the forest area shall be utilised for a club house project comprising rooms for accommodating outstation players, guests, official

connected with the game of cricket and Goa Cricket Association. In this area, there will be swimming pool, a gymnasium, health club, game rooms, etc. There will be also in-house restaurant/cafeteria.”

“No part of the forest area shall be utilised for constructing malls, hotels or any type of commercial project.”

7. It is pointed out in the affidavits that the conditions contained in the impugned approvals have been duly complied with and the identified equivalent non-forest land proposed for compensatory afforestation has been transferred and mutated in favour of the State Forest Department. It is contended that conditions incorporated in the approval dated 30th November, 2007 are complied with and there is a substantial compliance of impugned approval dated 28th October, 2008. In paragraph 8 of the additional affidavit, the second respondent has stated thus:-

“Goa Cricket Association shall commence construction works in the acquired land in stages and after obtaining all necessary permission from all the concerned authorities.”

8. In paragraph 10 of the additional affidavit it is stated by the second respondent that the Directorate of Sports by

communication dated 16th July, 2010 requested the second respondent to submit the details of the activities proposed by them in forest area in the background of the present petition.

9. From the affidavits filed by the second respondent it is very clear that without obtaining necessary clearances and permissions, second respondent is not going to proceed with the work of construction. There is an undertaking recorded in paragraphs 3 that no part of the forest area shall be utilised for constructing malls, hotels or any type of commercial project. We accept all the aforesaid statements and undertakings in the affidavits of the second respondents.

10. Perusal of the communication dated 20th May, 2010 issued by the Deputy Conservator of Forests(Central) of the Ministry of Environment and Forests of Government of India shows that all the aspects are being be considered by the Ministry of Environment and Forests.

11. All the aforesaid objections raised by the petitioners are bound to be considered by the Ministry of Environment and Forests of

the first respondent. It will be always open for the petitioners to make a representation to the Ministry raising contentions which are raised in this petition.

12. Affidavits filed by the second respondent clearly records that construction work shall be commenced only after obtaining all the necessary permissions and clearances. As construction is not likely to be commenced before obtaining all the permissions and clearances, we will have to direct that till such permissions and clearances are obtained, the second respondent shall not proceed with cutting of trees on the forest land.

13. Considering the aforesaid discussion, it is not necessary to keep the petition pending and we dispose of the petition by passing following order:-

- i. We accept the statement made by the learned Counsel appearing for the petitioners that challenge incorporated in paragraphs 5 to 7 of petition is not pressed at this stage. It will be open for the petitioners to raise the said contentions at the appropriate stage in appropriate proceedings.

- ii. It will be open for the petitioners to make a representation to the first respondent raising all the grievances which are made in this petition. First respondent shall deal with the representation as expeditiously as possible.
- iii. We accept the statements and undertakings of the second respondent in their affidavits.
- iv. We direct that till second respondent obtains all clearances and permissions for commencing the work of construction, no steps shall be taken to cut the trees on the forest land.
- v. Petition is disposed of in above terms.
- vi. Parties to act on the authenticated copy.

A. S. OKA, J.

F. M. REIS, J.

vn*