

BEFORE CENTRAL EMPOWERED COMMITTEE

(CONSTITUTED BY HON'BLE SUPREME COURT OF INDIA IN WRIT PETITION
NO. 202 OF 1995)

APPLICATION NO. OF 2010

IN THE MATTER OF:

Nana Khamkar

Applicant

Versus

State of Maharashtra & Ors.

Respondents

INDEX

Sr. No	Particulars	Pages
1.	Additional Submission	1-11
2.	Annexure A-1 RTI Information about illegal Road Construction	12
3.	Annexure A-2 RTI Information about illegal windmills and Resorts	13-14
4.	Annexure A-3 RTI Information about tree felling	15-16
5.	Vakalatnama	

APPLICANT

Date: 31.08.2010

THROUGH

RITWICK DUTTA

RAHUL CHOUDHARY

ADVOCATES

COUNSEL FOR APPLICANT

N-71, LGF, GREATER KAILASH-I, NEW DELHI

BEFORE CENTRAL EMPOWERED COMMITTEE

(CONSTITUTED BY HON'BLE SUPREME COURT OF INDIA IN WRIT PETITION
NO. 202 OF 1995)

APPLICATION NO. OF 2010

IN THE MATTER OF:

Nana Khamkar

R/o 203, Anuda Chambers,

Shaniwar Peth,

Karad, Dist-Satara

Maharashtra

Applicant

Versus

1. State of Maharashtra

Through Chief Secretary,

Mantralaya ,

Mumbai – 400 032.

2. Principle Chief Conservator of Forests

Wildlife Division

Van Bhawan, Civil Lines

Nagpur (Maharashtra)

3. Maharashtra Energy Development Agency (MEDA)

Through Managing Director

Mhada Building

Yerawada, Pune

Maharashtra

4. Executive Engineer

PMGSY Cell

Zilla Parishad

Stara-Maharashtra

5. Maharashtra Tourism Development Corporation

Through Managing Director

Express Towers, Nariman Point

Mumbai, Maharashtra

6. Collector and District Magistrate

Satara,

Maharashtra

Respondents

ADDITIONAL SUBMISSION ON BEHALF OF APPLICANT

Most respectfully showeth:

1. That the Applicant herein is a social activist from Satara District of Maharashtra. He is member of an organization 'Creative Nature Friends'. This organisation is instrumental in Environmental awareness campaign in Satara District. The Applicant has brought to notice of the authorities about massive tree cuttings in western ghats. He was instrumental in the follow up of sanctioning of the Sahyadri Tiger Project.
2. That by the present Application the Applicant is raising the serious violation of Wildlife (Protection) Act, 1972 and orders of Hon'ble Supreme Court inside the Koyana Wildlife Sanctuary and Sahyadri Tiger Reserve by the respondents. The violations primarily relates to following acts:
 - a) Construction of illegal Bituminous road of 6.4 km inside the Koyana Wildlife Sanctuary.
 - b) Creation of Windmills inside the Koyana Wildlife Sanctuary
 - c) Construction of resorts inside Koyana Wildlife Sanctuary

- d) Massive tree cutting in the corridor area of Chandoli National Park and Koyana Wildlife Sanctuary
 - e) Land transactions inside the sanctuary in spite of bar of accrual of rights as per section 20 of the Wildlife(Protection) Act. 1972.
3. That the 423.55 sq. km forest of Koyana Wildlife Sanctuary was declared as sanctuary in 1985 under section 18 of Wildlife (Protection) Act 1972. It is situated in Satara and Karad tahsil of Satara district of Kolhapur wildlife division. The sanctuary is the catchments of Koyana river and thereby helping the Koyana dam too. However the forest area has supported a rich flora and fauna, typically of Western Ghats.
 4. That the 423.55 sq. km forest of Koyana wildlife sanctuary was recommended to NTCA by PCCF (WL) on 4th December 2007 to be declared as Critical Tiger Habitat (CTH) and on 9th May 2008 also for declaration of Sahyadri Tiger Reserve.

CONSTRUCTION OF ILLEGAL BITMINOUS ROAD OF 6.4 KM INSIDE THE KOYANA WILDLIFE SANCTUARY

5. That the state government has constructed the illegal road inside the Koyana Wildlife Sanctuary of total length of 6.4 kms. The road is named as VE 59 to Kusawade is constructed by Respondent No.4 in violation of Wildlife (Protection) Act, 1972 and orders of Hon'ble Supreme Court. The Applicant herein filed an application dated 10.03.2010 under Right to Information to get the information about the legality of the road to Public Information Officer. The Applicant received the information to his application under RTI and was informed that the bituminous road was constructed up to palasari Taluka Patan in the year 2006 and no permission has been taken for the construction of the road. The response also informed the applicant that the construction of road was carried out illegally. The response

received under the Right To Information by the Applicant is filed herewith and annexed as **Annexure A-1**.

6. That no action has been taken against the respondent no.4 or other officials responsible for violation of Wildlife (Protection) Act, 1972 and orders of Hon'ble Supreme Court. The officials of the Forest Department also not made any attempt to stop the construction of the road.

CREATION OF WINDMILLS INSIDE THE KOYANA WILDLIFE SANCTUARY

7. That hundreds of wind power project have been set up inside the Koyana Wildlife Sanctuary. The wind mills are located on the eastern side of the Kyona wildlife sanctuary in village area of Vankusawade, Tehsil:- Patan, District Satara. Maharashtra Energy Development Agency the respondent No. 3 is the government agency which has approved the wind energy project on behalf of respondent no.1. There are altogether 600 windmills under this project and as per the information received under RTI by the Applicant herein 215 windmills are in Sanctuary area. Apart from the windmills, electric distribution lines, transformers are erected inside the Sanctuary area. The response received under the RTI by the applicant is filed and annexed as **Annexure A-2**.
8. That collectively the wind mills put up the huge biotic pressure on a herpatofauna of a very unique sada eco-system at the ridges and on movements of raptors and prey as well as predator species. Sadas", the lateritic plateaus with seasonal vegetation, fallen boulders, small caves and overhanging cliffs provide good habitat for Sloth bears, raptors, caecilians and other herpatofauna. Many amphibians found here are endemic to Western Ghats and species like Koyna toad (*Bufo koynayensis*) are unique to the Sadas of Koyna. There are six families and 176 known species of caecilians in the world. There are 27

described species belonging to 3 families (Ichthyophiidae, Uraeotyphlidae and Caeciliidae) in India. Out of them 22 species are endemic to Western Ghats. Some of them have reported from these sadas. Sada Waghapur pathar, sada near Kusawade forest around Koyana and Valmiki pathar near Chandoli National Park are affected by this.

CONSTRUCTION OF RESORTS INSIDE KOYANA WILDLIFE SANCTUARY

9. That respondent No. 5 Maharashtra Tourism Development Corporation among others have constructed illegal resorts on the western side of Koyana Wildlife Sanctuary near Kyona Dam in village area of Humbarli, Gokul Turf Helwak, Torne etc. The reply received under RTI inform that there are 10 resorts inside the Wildlife Sanctuary and no action has been taken for construction of resorts inside the sanctuary in violation of the Wildlife (Protection) Act, 1972 and orders of Hon'ble Supreme Court. The response received under the RTI is already filed and annexed as Annexure A-2 with this additional submission.

TREE CUTTING IN THE CORRIDOR AREA OF CHANDOLI NATIONAL PARK AND KOYANA WILDLIFE SANCTUARY

10. That the Koyana Wildlife Sanctuary and Chandoli National Park are connected through a very narrow forest which serves as a corridor for the wild animals. Tree cutting is taking place in village 'Navja' which is located inside the Wildlife Sanctuary. The RTI reply received by the applicant herein informs that illegal tree felling is taking place in Kyona Wildlife Sanctuary at Navja village. It also informs that tree felling has taken place in 2.5 to 3 hectores and almost 500 to 550 trees have been cut. The response received under the RTI is filed and annexed as **Annexure A-3**.

11. That it is further submitted that massive tree cutting is taking place in the village area of Kondhawale, Risawade, Gotane, Waghane, Kemse, Nechal etc. Though the felling of trees are on private forest but area forms part of the Sahyadri Tiger reserve. It is further submitted that as per the Wildlife Conservation Strategy 2002, the area between two sanctuaries or National Parks if they are located in the same region then it should be declared as conservation area. No such declaration of the area between Koyana Wildlife Sanctuary and Chandoli National Park as conservation area has been done.

LAND TRANSACTIONS INSIDE THE SANCTUARY IN VIOLATION OF BAR OF ACCRUAL OF RIGHTS AS PER SECTION 20 OF THE WILDLIFE (PROTECTION) ACT, 1972

12. That after the declaration of Koyana Wildlife Sanctuary in 1985, the illegal land transaction are going on inside the sanctuary area. Large scale land transactions are taking place in village Kusawade, Aral, Gojegaon, Nahimbe, Dastan, Vajegaon inside the Sanctuary area. The land transactions are going on in violation of provision of the Wildlife (Protection) Act, 1972. Section 20 of the wild life Act 1972 provides that:.

Bar of accrual of rights:- After the issue of a notification under section 18, no right shall be acquired in or over the land comprised within the limits of the area specified in such notification except by succession, testamentary or intestate.

13. That the all the above stated activities are illegal and against the Forest (Conservation) Act, 1980, and orders of Hon'ble Supreme Court. It is submitted that section 2 of the Forest (Conservation) Act, 1980 put restriction on the dereservation of forests or use of forest land for non-forest purpose. It provides that:

2no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

Further Hon'ble Supreme Court in order dated 12.12.1996 in W.P No. 202 of 1995 T.N. Godavarman vs. Union of India & ors has held that:

"1. In view of the meaning of word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. In accordance with section 2 of the Act, all ongoing activity within any forest in any state throughout the country, without the prior approval of Central Government, must cease forthwith. It is therefore clear that the running of saw mills of any kind including veneer or plywood mills and mining of any mineral are non forest purpose and therefore not permissible

without prior approval of the Central Government. Accordingly any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.”

14. That Hon'ble Supreme Court in order dated 14.02.2000 in W.P No. 202 of 1995 T.N. Godavarman vs. Union of India & ors put restrictions on the activities inside the National Parks and sanctuaries. Hon'ble Supreme Court held that:

“...we restrain respondents Nos. 2 to 32 from ordering the removal of dead, diseased, dying or wind-fallen trees, drift wood and grasses etc. from any National park or Game sanctuary or forest. If any order to this effect has already been passed by any of the respondent-States, the operation of the same shall stand immediately stayed. ”

That further by order dated 25.11.2005 Hon'ble Supreme Court allowed certain activities inside the National Park and Sanctuaries like activities which are necessary for day to day management of the protected area beside it does not involve any type of commercial exploitation. The order dated 25.11.2005 also held that:

“..The order dated 14th February, 2000 will not be applicable to the following activities provided that they:

- (i) are undertaken as per the management plan approved by the competent authority;
- (ii) are consistent with the provision of the Wild Life (protection) Act;
- (iii) are consistent with National Wild Life Action plan;

- (iv) are in conformity with the guidelines issued for the management of the protected area from time to time; and
 - (v) the construction and related activities are designed to merge with the natural surroundings and as far as possible use forest friendly material.
-”

15. That all the activities inside the Koyana Wildlife Sanctuary are in violation of the orders passed by the Hon'ble Supreme Court and till date no action has been taken against the offending persons.
16. That Applicant submitted an application dated 24.04.2010 before this Hon'ble Committee alongwith the documents and photographs. The application may be read as part and parcel to this submission. In this regard a letter dated 6.05.2010, No. 1-26 CEC/SC/2010- Pt. XXXV was also issued to PCCF, Department of Forest, Government of Maharashtra.

P R A Y E R

It is therefore most respectfully prayed that the Hon'ble Committee may be pleased to recommend to Hon'ble Supreme Court to:

- a) Pass an order thereby initiating proceedings and taking action against person and officials violating the provisions of Forest (Conservation) Act, 1980, Wildlife (Protection) Act, 1972 and orders of Hon'ble Supreme Court.
- b) Pass an order thereby directing the respondents to restore the Koyana Wildlife Sanctuary to its original 1984 condition.

c) To give any such other or further recommendation as this Hon'ble Committee deem fit and proper in the facts and circumstances of the case.

APPLICANT

Date: 31.08.2010

THROUGH

RITWICK DUTTA

RAHUL CHOUDHARY

ADVOCATES

COUNSEL FOR APPLICANT

N-71, LGF, GREATER KAILASH-I, NEW DELHI