

BEFORE THE NATIONAL GREEN TRIBUNAL,

SOUTHERN ZONE AT CHENNAI

M.A. No. ____ of 2017

IN

SUO MOTO APPLICATION NO. 78 OF 2017 (SZ)

BETWEEN

Mr. Rajeev Chandrasekhar

...Impleading Applicant

AND

Suo Motu proceedings initiated based on
the news item published in "Mathrubhumi News Paper"
Malayaalam Edition dated 25.03.2017
On the caption "SAVE MUNNAR"

...Applicant/Respondent No.1

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Date:
Chennai

Advocate for the Impleading Applicant

BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE AT CHENNAI

M.A. No. ____ of 2017

IN

SUO MOTO APPLICATION NO. 78 OF 2017 (SZ)

BETWEEN

Mr. Rajeev Chandrasekhar
Aged about 52 years,
S/o. Air Cdr M.K. Chandrasekhar (Retd.)
Resident of No. 375, 13th Main
3rd Block, Koramangala
Bengaluru- 560034

...Impleading Applicant

AND

1. Suo Motu proceedings initiated based on
the news item published in "Mathrubhumi News Paper"
Malayaalam Edition dated 25.03.2017
On the caption "SAVE MUNNAR"
...Applicant/Respondent No.1
2. Secretary to Government,
Government of Kerala,
Secretariat,
Thiruvananthapuram - 695 001
...Respondent No.1/Respondent No.2
3. The Chairman,
Kerala State Pollution Control Board
Pattom P O,
Thiruvananthapuram - 695004
...Respondent No.2/Respondent No.3
4. The Principal Chief Conservator of Forests,
Forest Headquarters, Vazhuthacaud,
Thiruvananthapuram - 695014
...Respondent No.3/Respondent No.4
5. The District Collector,
Collectorate, Kuyilimala
Painav P.O.,
Idukki - 685 603
...Respondent No.4/Respondent No.5

6. Secretary, Munnar Grama Panchayath,
Panchayat Office, Munnar Po,
Idukki District - 685 612
[Amended vide order dated May 3, 2017]
...Respondent No.4/Respondent No.5

7. The Chairman,
Kerala State Electricity Board,
Vydyuthi Bhavanam,
Pattom,
Thiruvananthapuram - 695004
[Impleaded as Respondent No.6 vide order dated May 3, 2017]
...Respondent No.5/Respondent No.6

8. The Secretary,
Government of Kerala,
Secretariat,
Thiruvananthapuram - 695 001
[Impleaded as Respondent No.7 vide order dated May 3, 2017]
...Respondent No.6/Respondent No.7

**APPLICATION UNDER SECTION 19 OF THE NATIONAL GREEN
TRIBUNAL ACT, 2010**

The Advocates for the Impleading Applicant submits as follows:

About Impleading Applicant:

1. The Impleading Applicant ("**Applicant**") is a citizen of India and a member of Parliament since 2006. As a representative of people, he has raised their voice against grave environmental issues which are being ignored due to high level corruption emanating from the syndicate of government officials, bureaucrats, politicians, builders, and developers.
2. The Applicant is the Vice Chairman of the National Democratic Alliance, Kerala Unit. He has been concerned about Munnar Forest Division which is one of the most famous hill stations in

Western Ghats, in Idukki District of Kerala. The Kannan Devan Hill (KDH) commonly known as Munnar and adjoining areas like Cardamom Hill Reserve (CHR) are identified as Eco-Sensitive Zone in the Western Ghats. This area is facing massive scale of encroachment of public land and illegal constructions by private individuals and real estate lobby supported by the local politicians. Owing to these illegal activities, Munnar Forest Division is exposed to deforestation, climate change and ecological imbalance.

3. That subject to the Impleading Application being allowed, the Applicant prays to bring to notice of this Learned Tribunal the several violations of law occurring in Munnar Forest Division.

Background of Munnar Forest Division:

4. With the integration of Travancore - Cochin State in 1950, a new Division namely "Malayattoor Forest Division" was formed with headquarters at Kodanad. Malayattoor Forest Division was again bifurcated by excluding the Eastern portion which formed a new forest Division called Munnar Forest Division with effect from 01/04/63 vide G.O. (M.S) 1011/62/ Agri dated 05/06/1962 consisting of three Ranges namely Devikulam, Marayoor and Adimaly. The confluence of three rivers Kadalar, Nallathanni Aar and Kallar, flowing down from various directions and confluence at one place which came to be known as Munnar.

Brief Facts:

5. Munnar Forest Division is situated in the High Ranges of Southern Western Ghats. It contains four sub regions namely the High Range Plateau of Kannan Devan Hills in North, valleys of Pooyamkutty and Edamala on western side, the Cardomom Hills in South East and the gorge of the main Periyar River in South. The once pristine hill station in the Western Ghats, Munnar is now engulfed with illegal constructions, illegal mining activity and encroachments. Located in Idukki district of Kerala, Munnar is surrounded by four National Parks namely Eravikulam, Anaimudi, Pampadumshola and Mathikettan and two wildlife sanctuaries namely Kurunjimala and Chinnar. It is also a habitat for a variety of wild animals and acts as a corridor for movement of several endangered species such as Nilgiri Tahr, Gaur, Elephants, tigers, etc. A copy of map of Idduki District is produced as **Annexure 'A1'**.
6. The forests of Munnar are of High Value Biodiversity areas and also important catchments of major rivers. The extensive flora and fauna are at a high risk of disappearing due to the blatant violations of environmental laws. The destruction of existing forest cover is destroying the ecosystem dependant on it. There is a huge depletion of wildlife on account of the disturbance of habitat arising out of the destruction of the existing forest cover. This area is facing massive scale of encroachment of public land and illegal constructions by private individuals and real estate

lobby supported by vested interests. Owing to these illegal activities, Munnar Forest Division is exposed to deforestation, climate change and ecological imbalance. The precarious condition of Munnar has been widely reported in newspapers and copies of the same are collectively produced as **Annexure 'A-2'**.

7. It all began in 1956 when several forest areas in Kerala came to be exposed to human occupation, primarily due to the very heavy pressure of population and secondarily due to Governmental programmes like colonization schemes, grow more food schemes, arable land scheme, hydro power projects, plantations etc. It was on account of this that some of the above schemes came under implementation. Forest lands were transferred for non forest purposes. Pressure built up for further expansion into forest areas adjoining converted lands. However, the Government of Kerala took the decision to regularize all the occupations that had come into being prior to 01.01.1977. A letter dated 26.06.1986 written by the Agricultural Production Commissioner & Secretary (Agriculture & Forests), Kerala to the Ministry of Environment & Forests, Government of India requesting to convey their concurrence under the Forest Conservation Act for the purpose of enabling issue of title deeds to the occupants of these forest areas, is produced as **Annexure 'A-3'**.

8. The lands comprising the entire revenue village of Kannan Devan Hills in the Devikulam taluk had been given on lease for coffee cultivation. The right, title and interest of the lessor had been assumed by the former Government of Travancore, which was succeeded by the Government of Kerala. The large extent of agricultural lands in that village had not been converted or used for plantations, as such the Government of Kerala in order to resume the agricultural land for distribution thereof for cultivation and purposes ancillary thereto, passed the Kannan Devan Hills (Resumption of Lands) Act, 1971 (hereinafter referred to as "**KDH Act**"). Section 9 of the KDH Act provides that the Government after reserving such extent of the lands required for cultivation, assign on registry the remaining lands to agriculturists and agricultural labourers.
9. The Government of Kerala vide G.O. (M.S) No. 787/88/RD on 02.11.1988, changed the pattern of utilization of land in Kannan Devan Hills, prescribing thereby the extent of land to be assigned, afforested, used for dairy development, housing and the land to be kept as it is. Copy of the G.O. (M.S) No. 787/88/RD on 02.11.1988 is produced as **Annexure 'A-4'**.
10. The Forest (Conservation) Act, 1980 (hereinafter referred to as "**FC Act**") was amended in 1988, which restricted de-reservation of forests and use for non-forest purposes, except without prior sanction from the Central Government. Section 2 of the FC Act is reproduced below:

“Sec 2: Restriction on the dereservation of forests or use of forest land for non-forest purpose.

Notwithstanding anything contained in any other law for the time being in force in a State, no 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 reafforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reafforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

This is further fortified by Rule 6 of the Forest (Conservation) Rules, 2003 which provides that every State Government or other authority seeking prior approval under Section 2 of the FC Act shall submit a proposal to the Central Government in the prescribe form.

11. The the Hon'ble Supreme Court vide order dated 12.12.1996 in *T.N. Godavarman Thirumulpad vs Union of India & Ors.* [W.P. No. 202 of 1995] directed that all ongoing activities including running of saw mills, plywood mills, mining of minerals and use for non-forest purposes, be stopped forthwith in any forest throughout the country, without prior permission of the Central Government required under Section 2 of the FC Act. The Apex Court further observed that the word 'Forest' must be understood according to its dictionary meaning, which covers statutorily recognized forests, whether designated as reserved, protected or otherwise. Hon'ble Court held that the term 'Forest land' occurring in Section 2 of the FC Act, will not only include 'forest' as understood in dictionary sense, but also any area

recorded as forest in the Government record irrespective of the ownership.

12. The Hon'ble Apex Court vide order dated 12.12.1996 in *T.N. Godavarman case (Supra.)* passed certain general directions, part of which is reproduced below for immediate reference of this Learned Tribunal:

"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, recognized 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 those belonging to private persons."*

In pursuance of the directions of the Hon'ble Apex Court, Munnar Forest Division was identified as 'forest' in the Report submitted by the Expert Committee constituted by the State of Kerala vide G.O. (Rt) 15/97/F&WLD dated 10.01.1997 which order was subsequently revised vide GO (Rt) 30/97/F&WLD dated 24.01.1997. A copy of the order dated 12.12.1996 passed by the Hon'ble Supreme Court in *T. N. Godavarman case (Supra.)* is produced as **Annexure 'A-5'** and copy of the report of the Committee is produced as **Annexure 'A-6'**.

13. Despite the interim directions passed by the Hon'ble Supreme Court, large scale encroachment and forged assignment, allotment of forest land continued in Munnar Forest Division. Mr. Rajan K Madhekar IPS, Addl. Director General of Police (Intelligence), Kerala brought these issues to the notice of the District Collector, Idduki vide letter dated 01.04.2004. Relevant extract from the letter is extracted below:

“There is information that large scale encroachment of Revenue/Forest land and issue of forged pattayams are going on in Idukki District, specially in Munnar, Devikulam, Kannan Devan Hills Village etc, with the active support of the concerned Revenue officials. It is known that about 3000 forged pafstayams were issued in Idukki district. Political parties / Religious Organizations / Government Employees / Traders / Businessmen are also included among these illegal occupants. Some of these occupants obtained huge amounts from Banks/Financial Establishments, as loan, by producing these forged Pattayams. Though cases are being registered in this regard, the action is not being continued allegedly due to political influence.”

Copy of the Letter dated 01.04.2004 written by Mr. Rajan K Madhekar IPS, Addl. Director General of Police (Intelligence), Kerala to the District Collector, Idduki, is produced as **Annexure 'A7'**.

14. The Hon'ble Supreme Court vide orders dated 09.05.2002 & 09.09.2002 in *T.N. Godavarman Case (Supra.)* directed the Central Government to appoint a Central Empowered Committee (hereinafter referred to as "the CEC") for the purposes of monitoring and ensuring compliance of the orders of the Hon'ble Supreme Court covering the subject matter of forests and wildlife. The CEC was appointed by the Ministry of Environment & Forests vide notification no. S.O. 1008 (E) dated 17.09.2002, a copy of which is produced as **Annexure 'A8'**.
15. The CEC was conferred *inter alia* functions and powers in respect of protection and management of forests and wildlife including in respect of deforestation, encroachments, working plans, compensatory afforestation, plantations, regeneration, illegal felling, transportation of timber and timber products and other forest produce, mining in forest area, illegal diversion of forest land for non forest purpose and other matters relating to the implementation of the Forest (Conservation) Act, 1980, Indian Forest Act, 1927, Wildlife (Protection) Act, 1972 and the rules, regulations and guidelines framed thereunder.
16. The CEC was also granted power to hear applications filed by any aggrieved person seeking relief against any action taken by the Government or any other authority purportedly in compliance of the orders passed by the Hon'ble Supreme Court or against any action of any person or body or agency in violation of such orders, and to dispose of such applications in

conformity with the orders of the Hon'ble Court and to refer to the Hon'ble Court any application which cannot be appropriately disposed off . In pursuance of these powers, the CEC considered an application filed by 'One Earth One Life' regarding the illegal grant of leases and the encroachments in the CHR, Idukki District, Kerala. The CEC in its report dated 07.09.2005 made following recommendations:

"i) The CHR being a notified reserve forest, no patta / lease or renewal of lease should be granted in the CHR area without obtaining the approval under the Forest (Conservation) Act, 1980. All pattas, leases, renewal of leases, change of land use or sale / transfer which has taken place in the CHR area after 25.10.1980 without the prior approval of the Central Government should be cancelled and the lands restored to the State Government;

ii) All the unauthorized occupants should be removed from the CHR in a time bound manner; and

iii) The CHR being a Reserve Forest should be managed as per the Working Plan duly approved by the Central Government under the Forest (Conservation) Act, 1980 and the orders of this Hon'ble Court should be strictly enforced something the State of Kerala has failed to do during the last many years."

Copy of the CEC Report dated 05.09.2005 submitted to Supreme Court is produced as **Annexure 'A9'**.

17. That certain glaring observations & conclusions from the CEC Report are reproduced below for ready reference:

“26 ii) The original area of the CHR as per the notification dated 24.8.1897 is 334 sq. miles. No effort has been made by the Revenue or the Forest Department to properly survey and demarcate the actual boundary of the CHR on the ground. As a result the encroachers continue to occupy more and more forest lands and benefit from the confusion prevailing about its exact boundaries;

...

vi) Once the encroached land, which is under Cardamom cultivation, is leased to the encroacher the encroachment ceases to exist and he is not treated as an encroacher. Perhaps this is a unique rule which rewards a law breaker (encroachers) by giving him lease hold rights over forest land;..

27. The CEC is of the considered view that in the Cardamom Hill Reserve, which still holds dense forest, illegal assignment of lands / grant of patta, illegal sales of land, large scale encroachments, transfer and sale of land and consequent deforestation; by the rich, the powerful and the influential continues unabated in gross violation of the Forest (Conservation) Act, 1980 This is causing irretrievable and immense loss to the dense evergreen forest holding rich biodiversity on steep slopes and destroying the water sheds, water catchments and streams and rivers which flow through these forests.”

18. The Hon'ble Supreme Court vide order dated 07.10.2005 in *T.N. Godavarman's case (Supra.)* observed that according to the CEC report, the list of encroachers is said to have included powerful and influential persons, including a member of Parliament and other relatives to some ministers. As can be seen from the aforesaid, about 3000 forged pattas were issued. 19 officers have been identified for issuance of the forged pattas between 1992 to 2003. A copy of the Supreme Court order dated 07.10.2005 is produced as **Annexure 'A-10'**.
19. The Report titled 'An Enquiry into the Encroachments and Illegal Constructions in Munnar, Chinnakanal, Pallivasal and other areas of Idukki District' submitted by Nivedita P. Haran, IAS, Principal Secretary, Revenue Department, Government of Kerala in the year 2007, has brought to light the incessant violations that take place in Munnar. The relevant portions of the report that show the fragile condition of Munnar are extracted hereinbelow for the immediate reference of this Learned Tribunal:

"Trees have been cut, forested lands are found to be cleared. Major constructions are seen carried out by way of huge concrete structures. Quarry stones are seen piled up at some sites. This is found at Pothenmade, Chinnakanal, Pallivals, Latchmi and many more. Constructions include resorts, private

road, school, church check-dam and towers set up by the cellular phone companies, some of these on Government land.

In Munnar town there are extensive constructions on poromboke lands, river poromboke, KSEB land, road poromboke and even on PWD land. Taking the Guest House Road as an example, official estimate is that there are encroachments all along the road.

Regarding the intensive construction carried out in Munnar town especially by way of hotels, Guest houses and resorts, no indication of actually examining the building plans of these structures and the pressure on infrastructure that would be generated, is in evidence."

A copy of the report 'An Enquiry into the Encroachments and Illegal Constructions in Munnar, Chinnakanal, Pallivasal and other areas of Idukki District' submitted by Nivedita P. Haran in the year 2007, is produced as **Annexure 'A-11'**

20. That the Hon'ble Supreme Court in *Nature Lovers Movement vs State of Kerala & Ors.* (2009) 5 SCC 373 held in context of the FC Act that:

"47. ...the 1980 Act is applicable to all forests irrespective of the ownership or classification thereof and after 25.10.1980, i.e., date of enforcement of the 1980 Act, no State Government or other authority can pass an order or give a direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest

purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government.

48. Another principle which emerges from these judgments is that even if any forest land or any portion thereof has been used for non-forest purpose, like undertaking of mining activity for a particular length of time, prior to the enforcement of the 1980 Act, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25.10.1980 without obtaining prior approval of the Central Government”.

Copy of the judgment of the Hon'ble Supreme Court in *Nature Lovers Movement vs State of Kerala & Ors.* (2009) 5 SCC 373 is produced as **Annexure 'A-12'**.

21. On 05.03.2010, a Central Team was constituted by MoEF, Government of India, vide letter F.No.1974/ADG (FC)/2010 to examine whether the FC Act has been violated in Munnar. The Central Team visited Munnar from 10th to 12th April, 2010 and perused records pertaining to KDH lands in Munnar Forest Division and looked into the issue of whether the lands are forest lands and attract the provisions of FC Act. The Central Team recognized the lands as forests, having the nature of forest of high ecological and conservation values. The Central Team brought to light the following violations:

(1) In the Seven Malai Hills the area has been cleared up for cultivation and has been subject to repeated attempts of encroachment;

(2) In the Kuttiyar Valley Area it was found that the Revenue Department has distributed pattas without complying with the provisions of the FC Act and eucalyptus plantations were being raised from 1965 by the Forest Department and subsequently by Hindustan Newspaper Limited.

The findings of the Central Team highlights the fact that despite KDH lands being 'forests' physically, legally, as per records and as per directions of the Hon'ble Supreme Court in *T.N. Godavarman's case (Supra.)*, the lands are not yet notified and declared as 'forests' by the State of Kerala. A Copy of the report of the Central Team submitted in April, 2010 is produced as **Annexure 'A-13'**.

22. According to the Report of the Sub-Collector, Devikulam submitted in 2010, the Land Mafia in Kerala concentrated their attention to the tourist area of Idduki district, especially to Munnar, Chinnakkanal, pallivasal, Vagamon etc. The Land Mafia grabbed the valuable Government land both by buying the lands given for cultivation and also by way of forged documents and bogus patta/assignment with the help of the Government Employees, especially of Revenue and Registration Departments. Idukki was dumping space for all punished

corrupt officials and those who had eye on making money flourished the above system. Copy of the Report of the Sub-Collector, Devikulam, 2010 is produced as **Annexure 'A-14'**.

23. That State of Kerala passed the Munnar Special Tribunal Act, 2010 thereby constituting Munnar Special Tribunal for the adjudication of disputes in respect of land in Munnar area by transferring the land related cases pending before the various courts and other authorities to the Tribunal and to provide for matters connected therewith or incidental thereto. Section 2(g) of the said Act defines 'Munnar area' as all lands comprised in the villages of Chinnakkanal, Kannan Devan Hills, Santhanpara, Vellathooval, Aanavilasam, Pallivasal, Aanaviratty and Bison Valley in Devikulam and Udumpanchola Taluks in Idukki District. As such the application of the said Act is limited to the abovementioned 8 villages, whereas the problem of encroachment, deforestation and illegal construction is widespread in Munnar Forest Division which is a much larger area in comparison to it. Copy of the Munnar Special Tribunal Act, 2010 is produced as **Annexure 'A-15'**.
24. The Working Plan of the Munnar Forest Division for the period of 2010-2011 to 2019-2020 which was subsequently formulated by the State of Kerala was approved by the Central Government vide letter dated 16.03.2011 issued to the Principal Secretary to the Government of Kerala, Forests and Wildlife Department,

Thiruvananthapuram, subject to *inter alia* the following conditions:

- (i) It may be ensured that no activity is permitted/taken up in forest area in violation of the provisions of FC Act.
- (ii) The standing instructions issued by the Hon'ble Supreme Court from time to time in *T.N. Godavarman's Case (Supra.)* as well as in similar Writ Petitions shall meticulously be followed.
- (iii) No construction activity shall be taken up in forest area in violation of the provisions of the FC Act.
- (iv) This approval does not *ipso facto* imply approval of any proposed non forestry activities requiring separate clearance under FC Act. Such activities if any, shall not be undertaken until separate forest clearance is obtained under the Act.

A copy of the letter dated 16.03.2011 issued by the Ministry of Environment and Forest to the Principal Secretary to the Government of Kerala, Forests and Wildlife Department, Thiruvananthapuram is produced as **Annexure 'A-16'**

25. It is submitted that in addition to being identified as 'forest', Munnar Forest Division is also recognized as an 'Ecologically Sensitive Area' (hereinafter referred to as "**ESA**"). The Ministry of Environment and Forest (hereinafter referred to as "**MoEF**") has on acceptance of the report of the High Level Working

Group (hereinafter referred to as "HLWG") committee constituted by it, recognized the Western Ghats to be "a global biodiversity hotspot and a treasure trove of biological diversity". MoEF recognized the Western Ghats to be an ESA vide letter F. No. 1-4/2012-RE (Pt.) dated 13/11/2013. MoEF in exercise of its powers conferred under section 5 of the Environment (Protection) Act, 1986 issued the following direction:

"The following category of new and/or expansion projects/activities shall be prohibited in ESA from date of issue of these directions except those cases which have been received by EACs/MoEF or SEACs/SIEAAs before the date of putting HLWG report on the website of the Ministry, i.e. 17/04/2013 and which are pending with EACs/MoEF or SEACs/SIEAAs. Such projects will be dealt under the guidelines and rules applicable at the time of application before the respective EACs/MoEF or SEACs/SIEAAs. Apart from such cases, no pending case or any fresh case shall be considered by the EACs/MoEF or SEACs/SIEAAs from the date of issue of these directions.

(a) Mining, quarrying and sand mining

(b) Thermal Power Plants

(c) Building and construction projects of 20,000 sq. M. Area and above

(d) Township and area development projects with an area of 50 ha and above and/or with built up area of 1,50,000 sq. M. And above

(e) Red category of industries”

The notification identifies amongst areas from other states, Kannan Devan Hills, Pallivasal, Anaviratty, Vellathuval, Chinnakanal, Baisonvally, Poopara, Santhapara and Anavilasam in Kerala as ESA. A copy of the letter F. No. 1-4/2012-RE (Pt.) dated 13/11/2013 issued by the Ministry of Environment and Forests, Government of India is produced herewith as **Annexure ‘A-17’**.

26. Nivedita P. Haran, IAS, Add. Chief Secretary (Home & Vigilance Dept.), Government of Kerala submitted a report dated 23.10.2014 on ‘Unauthorised Possession of Government Land in Kurinijimala Sanctuary in Vattavada and Kottakamborr Villages’, the recommendations wherein have been approved by the State of Kerala vide letter no. G.O. (Ms) No.69/2015/RD dated 16.02.2015, directing that:
- i. The entire Eucalyptus Grandis plantations in some villages shall be taken over by Government at once.
 - ii. Ban on planting of eucalyptus, acacia and other exotic species in the Anchanadu tract and protection of the remaining shola forests in the area.
 - iii. Each and every case of pattayams in the area should be verified without allowing the use of power of attorneys or legal representation. Committee had observed that the rule of law had broken down in Anchanadu. The bigwigs

obtain possession of land initially encroached by Tamil workers by hoodwinking them, consolidate the holdings and add large areas of surrounding shola forests to their holdings. Eucalyptus is then planted on these lands which destroy the local ecosystem. Power of Attorneys was being misused for the transactions.

- iv. The land of genuine patta holders should be identified, demarcated and handed to the assignee or genuine legal heir of the assignee along with a spatial map. All encroachers should be evicted.
- v. Strong disciplinary action against officials who have shown dereliction of duty by allowing harvesting of illegally planted eucalyptus or in connivance with land grabbers.
- vi. The cases of encroachments and illegal purchase of land by politicians, officials and influential people to Lokayukta after verification by the Vigilance and Anti-corruption Bureau.

Copy of the report dated 23.10.2014 is produced as **Annexure 'A18'** and letter no. G.O. (Ms) No.69/2015/RD dated 16.02.2015 is produced as **Annexure 'A19'**.

- 27. An Original Application No. 462 of 2013(SZ) was filed by the Munnar Restoration Society for a direction to appoint a committee of experts in environmental, architectural and watershed management aspects to assess the damage and

destruction caused to the principal rivers and streams by the encroachers and others with reference to the litho maps pertaining to the first survey of the land of Munnar, inter alia. This Hon'ble Tribunal vide order dated 01.10.2015 disposed off the said application with a direction to the Government of Kerala to make follow up action and see that the decisions are implemented in their proper spirit. We also direct the Pollution Control Board to take immediate steps for the purpose of setting up of treatment plant at Munnar, after obtaining necessary permission from the authorities concerned. The Pollution Control Board of Kerala was directed to take steps in directing the Munnar Grama Panchayath to take all necessary steps for the purpose of setting up of the Common Treatment Plant at Munnar after obtaining necessary permission from the authorities concerned and intimate the same to the Board, who shall monitor the functioning of such treatment plant regularly. Copy of the order dated 01.10.2015 passed by this Hon'ble Tribunal in Original Application No. 462 of 2013(SZ) is produced as **Annexure 'A20'**.

28. This Hon'ble Tribunal in the said Original Application No. 462 of 2013(SZ) has taken the instant issue into consideration and on the basis of report of the District Collector, Idduki dated 26.08.2015 issued directions to the State of Kerala to curb the encroachments, restore the Munnar area and not to supply electricity connection for illegal constructions. However, again in

2017, this Hon'ble Tribunal has been constrained to take suo moto cognizance of the matter, due to inaction of the State of Kerala.

29. That Hon'ble High Court of Kerala in *R. Haridas vs State of Kerala & Ors.* 2016 SCC Online Ker 21249, observed, while dismissing the writ petition filed by a builder challenging stop notices issued against construction of two resorts, that:

"20. The Revenue authorities, a law unto themselves, have been violating the provisions and colluding with the assignees causing gross damage to the ecology and environment. Be that as it may; the petitioners herein were quite aware of the conditions of assignment; though their ignorance, if at all, would have been of little consequence in the teeth of the statutory prescriptions. The relaxation sought for, having not been granted, the petitioners commenced and continued the construction at their risk and peril. They cannot now turn round and contend that the revenue authorities led them to believe that a construction could be carried on in the assigned land and in that belief considerable monies were expended to commence and continue a construction."

Despite these orders, reports and steps, nothing has improved in Munnar Forest Division and there is an continuous encroachment and illegal construction all around the region, which is irreversibly affecting the environment & ecology.

Grounds:

30. It is submitted that after the commencement of the FC Act, prior approval of the Central Government under section 2 of the FC Act is *sine qua non* for the State Government and other authorities before passing any order with regard to dereservation of forests, use of forest land for non forest purpose, clearing of trees in forest land and assignment of forest land by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government.
31. Despite Munnar being identified as 'forest' and recognized as 'ESA' there has been continuous failure in implementation of the FC Act in Munnar. Encroachment of forest land continues to be the most pernicious practice endangering the forest resources in Munnar. The blatant violations of the statutory provisions of the FC Act and the flouting of environmental laws by revenue officials has allowed rampant commercialization leading to massive land encroachment and illegal constructions. Large scale encroachment of forest land and issue of forged pattayams with active support of revenue officials has become a perennial problem in Munnar.
32. The commercialization is a direct result of the growth of tourism in Munnar which has led to a massive demand for land. It is submitted that land has become a precious commodity in

Munnar. The growth of tourism in the area over the last 20 years has led to a massive demand in the hospitality sector. To accommodate tourists, several constructions in violation of building laws and encroachment of government land is being carried on. These constructions apart from being illegal also involve dust and pollutants thereby leading to a consequent destruction of forests.

33. These reports bring to light the large scale encroachments of Revenue and Forest land through issue of forged pattayams with the support of revenue officials. All the lands assigned to local people in Munnar and adjoining areas are strictly for either cultivation or residential purpose under the Kannan Devan Hills (Reservation and Assignment of Vested Land) Rules, 1977 and Kerala Land Assignment Special Rules, 1993. Construction of commercial buildings / resorts without prior approval from the Central Government is a blatant violation of the FC Act. It is trite law that even if any forest land or any portion thereof has been used for non-forest purpose, like undertaking of mining activity for a particular length of time, prior to the enforcement of the FC Act, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25.10.1980 without obtaining the prior approval of the Central Government.
34. Despite the laws being in force, there is a serious lacuna in their enforcement. An article titled 'Remote sensing data shows massive diversion of forest land in Munnar' dated 27.04.2017

published on livemint.com, highlighted that 7.71% of what was forest area in 1973 in Devikulam, the revenue block of which Munnar and some surrounding panchayats are a part of, is not forest anymore. The rate of forest depletion for overall Kerala between 1980 and 2016 is 3.6% which in itself is the third highest proportion of forest land diversion amongst Indian states. The data shows that 13638.43 hectares (136.38 sq km) of forest land in and around one of the greatest biodiversity hotspots on the earth, Western Ghats, doesn't exist anymore. Copy of the article is produced as **Annexure 'A-22'**.

35. Munnar emerging as a top tourist destination has become the single biggest region for degradation of the region's biodiversity. There are more than 400 resorts and lodges constructed in and around Munnar, which destroys the beauty of Munnar. Many of these constructions are by encroaching adjoining public lands. Even though the revenue officials issue stop memo to the commercial constructions, the same are being continued with impunity the help of vested interests and building permits being issued illegally by Gram Panchayats. Even though there were several instances of criticism from Hon'ble High Court of Kerala, to take over the encroached lands and illegal constructions, the state government machinery is silent on the same.
36. Basis the material presently available, the Impleading Applicant submits the following illustrative table of potential violations in

Munnar Forest Division, that might warrant suitable orders from this Hon'ble Tribunal in the Subject Case:

S. NO.	VIOLATION /ACTIVITY	NOTIFICATION/LAW/JUDGMENT
1.	<u>Mining and quarrying</u>	<p>a. Ministry of Environment & Forest's (MOEF's) issued direction dated 13.11.2013 under Section 5 of the Environment Protection Act, 1986 identifying Ecologically Sensitive Area (ESA) as the natural landscape having high biological richness, low forest fragmentation, low population density and containing protected areas, world heritage sites, tiger and elephant corridors.</p> <p>b. MOEF prohibits following activities in ESA:</p> <ol style="list-style-type: none"> 1. Mining, quarrying and sand mining; 2. Thermal Power Plants; 3. Building and construction projects greater than 20,000 square meter; 4. Township and Area Development projects greater than 50 hectares and built up area greater than 1,50,000 square meter; and 5. Red category industries as such by CPCB. <p>c. This direction identifies Kannan Devan Hills, Chinnakanal, Cardamom Hills, Santhanpara, Vellathooval, Aanavilasom, Pallivasal, Aanaviratty and BisonVally in Munnar Forest Division as Ecologically Sensitive Areas.</p> <p>d. Forest (Conservation) Act, 1980- Section 2</p>

2.	<p><u>Forged Assignment /Pattayans with collusion of State of Kerala</u></p> <p>In Kuttiyar valley (Kannan Devan Hills), assignments without obtaining permission from central government and the assigned lands are being used for eucalyptus plantations.</p>	<p>a. Forest (Conservation) Act, 1980, - Section 2 (3)</p> <p>b. T.N. <i>Godavarman Thirumulkpad v. UOI & Ors.</i> AIR 1997 SC 1228, decided in 12.12.1996 “.....all ongoing activities within any forest in any state throughout the country without prior approval of central government must cease forthwith.”</p> <p>c. Kerala Land Conservancy Act, 1957 - section 5 prohibits unauthorized occupation of government land.</p>
3.	<p><u>Use of forest land for non forest purpose</u></p>	<p>Forest (Conservation) Act, 1980 - Section 2 (2)</p>
4.	<p><u>Forest land assigned to occupants prior to 01.01.1977 have been diverted for uses other than which is permitted by the Central Government</u></p>	<p>Forest (Conservation) Act, 1980 - Section 2</p>
5.	<p><u>Encroachment</u></p>	<p>a. <i>One Earth One Life v State of Kerala</i>, W.P. (C) No. 35501/2009 [Kerala High Court] - “It is for the Government and its Authorities especially the Forest Department to ensure that the Forest Land is not misutilized by issuing assignment orders/pattas to persons who are not eligible for the same. If there is any encroachment on the forest land, it is for the concerned officers to ensure that encroachment is removed at the earliest.”</p> <p>b. <i>Munnar Restoration Society v. State of Kerala</i>, Application No. 462/2013 [NGT Southern Zone] - “The stand taken by the government with regard to</p>

		<i>unearthing the bogus assignments and evicting unauthorized encroachments in Munnar Area was directed by the court to be implemented in proper spirit."</i>
6.	<u>Violation of the conditions of permission granted under Section 2 of Forest (Conservation) Act, 1980 in Munnar Forest Division</u>	<p>a. Approval of Working Plan for Munnar Forest Division was issued by MOEF on 16/03/2011 subject to the following conditions:</p> <ul style="list-style-type: none"> i. No construction activity shall be taken up in forest area ii. No felling of trees in areas having altitude greater than 1000 meters. iii. No felling of trees from the crest of hills upto a distance of 400 meters on either side and streams upto a distance of 45 meters on either side of the perennial streams. <p>Forest (Conservation) Act, 1980 - Section 2</p>
7.	Construction of lodges, resorts, high rise buildings etc within 10 km of wildlife sanctuaries without prior permission from the Standing Committee of National Board of Wildlife.	Environmental (Protection) Act, 1986
8.	<u>Municipal Solid Waste being dumped in forest land; and Diminishing water quality of rivers</u>	<ul style="list-style-type: none"> a. Forest (Conservation) Act, 1980 b. Environmental (Protection) Act, 1986 c. Section 26 of National Green Tribunal Act, 2010 d. Water (Prevention and

		Control of Pollution) Act, 1972 e. Munnar Restortion Society v. State of Kerala & Ors, Application No. 462/2013 [NGT (SZ)] - <i>“Kerala State Pollution Control Board to take all necessary steps for setting up common treatment plant at Munnar”</i> .
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37. There is an emergent need that this Hon'ble Tribunal takes holistic cognizance of the matter and issue necessary directions to restore and conserve the pristine ecosystem in Munnar. For this purpose, the Impleading Applicant prays this Hon'ble Tribunal to adopt following interim & long term measures:

INTERIM MEASURES:

- i. Pass an order prohibiting all further commercial, industrial, or tourism related activities in the Munnar Forest Division;
- ii. Pass an order prohibiting all assignments or constructions, whether commercial, industrial or otherwise, in the Munnar Forest Division;
- iii. Direct the State of Kerala to take necessary steps to ensure that no building permits for commercial constructions are issued by any of the Gram Panchayats in the Munnar Forest Division;

- iv. Constitute an expert committee consisting of one official from the MOEF, one member from the National Biodiversity Board, one member from Central Pollution Control Board, one independent expert from the field of Environmental Science and one representative from the State of Kerala, to carry out the following activities:
 - a. Inspect the Munnar Forest Division with regard to encroachments and/or illegal constructions and/or mining and/or any other violations of Forest Conservation Act, 1980;
 - b. Assess the damage and deterioration caused to the environment by each encroachment, illegal construction, illegal mining activity or any other violation of Forest Conservation Act, 1980;
 - c. Conduct a detailed study to assess the carrying capacity of Munnar Forest Division with respect to all commercial activities including tourism;
 - d. Identify all commercial constructions post 27th October, 1980 in the Munnar Forest Division;
 - e. Examine the steps and measures to be undertaken for restoration of the Munnar Forest Division to its original pristine glory; and
 - f. Evaluate the compensation to be paid by each project / construction / assignment holder / mining and any and all other illegal activity in Munnar Forest Division in respect of damage caused by such project

construction / assignment holder / mining activity or illegal activity in terms of the polluter pays principle;

- v. Direct the expert committee to submit the report within timelines as may be prescribed by this Hon'ble Tribunal;
- vi. Direct Kerala State Pollution Control Board to ensure that no environmental pollutants, effluents, municipal solid wastes whatsoever are dumped and/or sewage is discharged, in the Munnar Forest Division.

LONG TERM MEASURES

- i. Pass an order prohibiting all further commercial, industrial, or tourism related activities in the Munnar Forest Division;
- ii. Pass an order prohibiting all commercial, industrial, mining or tourism related activities in the Munnar Forest Division;
- iii. Pass an order prohibiting all assignments or constructions, whether commercial, industrial or otherwise, in Munnar Forest Division;
- iv. Direct the State of Kerala to prohibit all mining in the Munnar Forest Division, in accordance with the direction dated 13.11.2013 issued by the Ministry of Environment and Forests declaring Munnar Forest Division as ecologically sensitive area;
- v. Direct the State of Kerala to declare the lands identified by the Expert Committee vide G.O. (RD) 50/97/F&WLD dated

10.01.1997 as forest in the Munnar Forest Division as 'forest' under the Kerala Forest Act, 1961;

- vi. Direct the State of Kerala to take necessary steps to ensure that no building permits for commercial constructions are issued by any of the Gram Panchayats in the Munnar Forest Division;
- vii. Declare that all assignments in Munnar Forest Division, made after 1980 and without prior permission of the Central Government as mandated under Section 2 of the Forest Conservation Act, 1980, as illegal and consequently, direct the State of Kerala to resume possession of all such lands, together with buildings and/or structures thereon;
- viii. Direct the Revenue Department and Forest Department of the State of Kerala to jointly inspect and identify the violations of the conditions imposed by the Central Government under Section 2 of the Forest Conservation Act, 1980, when granting permission for assignment of forest land for non-forest purposes and in the event of any violations whatsoever, direct the Revenue Departments and Forest Departments to cancel such assignments.
- ix. Direct the State of Kerala to identify all commercial constructions in Munnar forest division that have come up post 25th October 1980 without seeking permission under the Forest Conservation Act, 1980 and consequently, demolish all such constructions and resume possession of the underlying land;

- x. Direct the State of Kerala to identify persons including without limitation government officials and politicians who are responsible for any violations of the Forest Conservation Act, 1980; the Water (Prevention and Control of Pollution) Act, 1974; Environment Protection Act, 1986; Air Prevention and Control of Pollution Act, 1981; and impose penalty on all wrongdoers, under each of the aforesaid statutes, as applicable, for depletion of the environment and forest;
- xi. Direct the State of Kerala to strictly implement the directions issued by Ministry of Environment and Forests vide order F No. 1-4/2012-RE(Pt.) dated 13.11.2013 under Section 5 of the Environment (Protection) Act, 1986 in Munnar Forest Division, irrespective of the land ownership & possession;
- xii. Direct the State of Kerala to prepare, on the basis of the report of the expert committee, a detailed working plan/management plan for the entire Munnar Forest Division (including the illegally diverted/assigned lands) for seeking approval under section 2 of the Forest Conservation Act, 1980;
- xiii. Direct the State of Kerala to initiate prosecutions against the erring officials, authorities and government departments under Sections 3A and 3B of the Forest Conservation Act, 1980 and Sections 15 and 17 of the Environmental Protection Act, 1986; Sections 41 of Air Act and Sections 48 of Water Act;
- xiv. Direct Kerala State Pollution Control Board to ensure that no environmental pollutants, effluents, municipal solid wastes whatsoever are dumped and/or sewage is discharged, in the Munnar Forest Division;

xv. Any other relief which this Hon'ble Tribunal deems fit and proper in the interest of environment, may also be passed.

38. The present Application is *bona fide* and is being filed in public interest. The Impleading Applicant has not filed a similar application before this Hon'ble Tribunal or any other court of law of the country.

PRAYER

It is, therefore humbly prayed that this Hon'ble Tribunal may graciously be pleased to:

- i. Allow this Application and permit the Impleading Applicant to be impleaded in the matter being Suo Moto Application No. 78 OF 2017 (SZ);
- ii. Allow the Impleading Applicant to file detailed pleadings and produce documents, in support of the cause being considered *suo moto*; and
- iii. Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

IMPLEADING APPLICANT

THROUGH

ADVOCATE FOR THE IMPLEADING APPLICANT

Date: