

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
PUBLIC INTEREST LITIGATION WP NO. 30 OF 2018

1. The Wildlife of Netravali Wildlife Sanctuary, through their next best friend, the Goa Foundation, through its Secretary, Dr Claude Alvares, with Office @Rm.7, Le Brag Chambers, Mapusa Clinic, Mapusa 403 507 Goa.

2. The Goa Foundation, through its Secretary, Dr Claude Alvares, with Office @Rm.7, Le Brag Chambers, Mapusa Clinic, Mapusa, Goa 403 507

.... Petitioners.

Versus

1. The Chief Wildlife Warden, Netravali Wild Life Sanctuary, Forest Department, Panaji, Goa 403001

2. State of Goa, through its Secretary (Forests), Secretariat, Porvorim, Goa - 403 501

3. State Advisory Board of Wildlife through its Member Secretary, Forest Department, Panaji, Goa 403 001

4. Goa State CAMPA, through its Member Secretary, Panaji, Goa 403 001

5. The South Goa District Mineral
Foundation, through its
Member Secretary,
C/o. Department of Mines & Geology
Menezes Braganza Building,
Panaji, Goa 403 001

6. Indian Bureau of Mines,
through the Regional Controller of Mines,
IBM Colony, New National Highway,
Near Arlem Brewery, P.O Fatorda,
Margao, Goa 403 602.

..... Respondents.

Ms. Norma Alvares, with Ms. A. Gode, Advocate for the Petitioner.

Mr. D.J. Panam, Advocate General with Mr. Deep Shirodkar,
Additional Govt. Advocate for Respondents No.1, 2 and 5.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

***Reserved on : 11th September, 2019.
Pronounced on : 17th September, 2019.***

JUDGMENT: (Per M.S. SONAK, J.)

Heard Ms. Norma Alvares for the Petitioners and Mr. D.
Pangam, learned Advocate General with Mr. Deep Shirodkar,
Additional Govt. Advocate for Respondents No.1, 2 and 5.

2. Rule. Rule is made returnable forthwith, with the consent

of and at the request of the learned Counsel for the parties.

3. In relation to Netravali Wildlife Sanctuary (NWLS), the Petitioners, in public interest, seek directions to the Respondents for rehabilitation and restoration of the abandoned mined out areas within time-bound period under the supervision of the State Wildlife Advisory Board. The NWLS was notified in the year 1999. At that time, no less than 34 mining leases existed within its boundaries, out of which 13 were in operation. In the year 2003, the Petitioner No.2, Goa Foundation approached the Central Empowered Committee (CEC) to halt all mining activities within the NWLS, in compliance with the orders made by the Hon'ble Supreme Court from time to time on this subject.

4. On 7th November, 2003, the CEC directed stoppage of mining activities inside the NWLS, forthwith. Therefore, it is an admitted fact that since 7.11.2003, there are no mining activities inside the NWLS, though it is the case of the Petitioners that the mining companies did make several attempts to exclude their mining lease areas from the boundaries of the NWLS.

5. In July, 2011, the Petitioners instituted the a PIL Writ Petition No.28/2011 for rehabilitation of abandoned mining lease

areas. In this public interest litigation, the Deputy Conservator of Forests filed an affidavit disclosing that deforested mining lease areas totalled approximately 80 hectares, i.e. 50 hectares dump and 30 hectares mining pits. He admitted that it was necessary for these areas to be rehabilitated in order to regain the natural forest cover and wildlife habitats. He then stated that the Forest Department had successfully initiated a pilot project for rehabilitation of almost 10 hectares of such areas. He also presented a proposal for restoration, spread over the years 2012-2017 by planting various indigenous and fruit bearing species. He submitted that the leaseholders may be made to contribute necessary funds to rehabilitate these abandoned mines and the success of the restoration plan would depend upon the contribution received from such leaseholders.

6. This Court, vide order dated 17.1.2012, disposed of the PIL Writ Petition No. 28/2011, *inter alia*, by directing the Chief Wildlife Warden and the State of Goa to file compliance reports every year, on or about 30th January, to begin from the year 2013.

7. The order dated 17.1.2012 made in the PIL Writ Petition reads thus :

"Heard learned Counsel for the parties.

2. Rule. By consent heard forthwith.

3. By this Public Interest Litigation, the petitioner seeks direction against respondent no.1 to undertake rehabilitation of the mine sites within the Netravalli Wildlife Sanctuary that have been declared closed by the Government of Goa pursuant to order of Central Empowered Committee ('CEC' for short) dated 7th November, 2003 and subsequent orders passed by the Supreme Court and CEC.

4. Respondent no.1 has filed affidavit. The affidavit discloses that the Forest Department has conducted an ocular survey of area and has tentatively identified 34 mining leases in Neturlim Wildlife Sanctuary and a tentative restoration plan along with an estimate for restoration has also been prepared. A copy of the said plan has been annexed along with the affidavit. It has been further stated that a duty is cast on every holder of prospecting license or mining lease to undertake phased restoration, reclamation and rehabilitation of the lands affected by the prospecting or mining operations and such holder shall complete this work before the conclusion of such operations and before the abandonment of prospect or mine. It has been further stated that as per the terms of the environmental clearances granted to the lease holders, they are bound to rehabilitate the mines after they cease mining operations.

5. In view of the affidavit filed by the respondent, the cause of action in the present petition no more survives.

6. The statements made in the affidavit by respondent no.1 are accepted. We direct respondent nos.1 and 2 to take appropriate steps for implementation of tentative

restoration plan expeditiously. Respondent nos.1 and 2 are further directed to file compliance report every year on or before 30th January beginning from 2013.

7. Writ Petition stands disposed of accordingly."

8. It is the case of the Petitioners that despite this Court's order dated 17.01.2012, neither was any restoration work undertaken, nor were any reports filed in this Court. It is the case of the Petitioners that it was not done mainly because there were no contributions from the leaseholders, or rather because the erstwhile leaseholders refused to provide any funds for rehabilitation of these areas.

9. The Petitioners have pleaded that they organised a brief study by a research student of the conditions of the mining areas in the NWLS, which indicated that no rehabilitation work was going on by the Forest Department or any other agency of the State Government. On such basis, the Petitioners instituted the present PIL Writ Petition No.30/2018, some time in August, 2018.

10. From time to time, various orders were made in this Petition on the aspect of rehabilitation of the areas where the mining operations were earlier carried out upto the year 2003. We noted the statement of the learned Advocate General that the Petition was not

being looked at in an adversarial manner and any suggestions from the Petitioners, which were possible to be implemented, will be considered and implemented.

11. Vide order dated 8.1.2019, the Indian Bureau of Mines was impleaded as Respondent in this Petition to respond to the issue as to whether any mining closure plans were submitted by the erstwhile leaseholders and status of implementation of such closure plans. The Petitioners, after site visits along with the Forest Department Officials, gave several suggestions in the context of rehabilitation of these areas and from time to time, directions were issued to the Respondents to consider and respond to such suggestions.

12. As recorded in some of the orders, the learned Advocate General himself suggested and arranged for a joint site visit to the site on 30th October, 2018. It is the case of the Petitioners that during the course of this site visit, Shri Sanjay Waradkar, Deputy Conservator of Forests, Wildlife and Eco-Tourism, South Division, Margao took the group around some of the abandoned mining areas. The group noticed two large mining pits, with water, which apparently, now serve as waterholes for animals. The group also noticed that some of the dumps were vegetated with creepers and plants and appeared to be stabilised, many others had loose earth and

were subject to run off, as seen from the gullies. It is, however, the case of the Petitioners that most of the abandoned areas were still bare rocky patches, on which the Forest Department had recently commenced planting rows of saplings.

13. The Petitioners made the following suggestions in relation to rehabilitation of such areas :

(A) That rehabilitation would occur much quicker if the bare areas were first planted with grasses as they take root quickly, providing ground cover and when they grow to one meter height (with 2 monsoons) they trap the seeds of trees growing within the sanctuary, thus establishing '*natural progression*' of forests. Dossier of photographs of the rehabilitation of a mining site in Bicholim carried out by the Petitioners within 2 years was given to the Forest Department;

(B) That for rehabilitation of the tailing pond area which is sheer silica and on the surface (like beach sand in texture), soil from the adjacent dumps should be placed upto a depth of a meter, as this would give a base on which plantation would take root. The Forest Department was totally opposed to this suggestion as it would destabilise the dumps. However, dumps are not natural to the NWLS and dismantling part of them would not be outside the framework of

rehabilitation works.

(C) That suitable accesses should be made for animals to easily enter/exist the mining pits/waterholes, and barriers should also be created in steep portions to prevent animals falling into the pits.

14. The Indian Bureau of Mines filed an affidavit, in which they stated that the lessees have neither submitted any mining closure plans, nor given any financial assurance for rehabilitation to the Indian Bureau of Mines, since the mines were closed before the deadline for submission was ready. In short, therefore, the Indian Bureau of Mines expressed total helplessness in this matter.

15. Mr. Sanjay Waradkar filed his affidavit on 23.10.2019, in which he stated that this matter has to be addressed in a sensitive manner, since, according to him, any aggressive measures undertaken even towards rehabilitation, might have adverse effect on the habitat and ecosystem at the NWLS. He has submitted that if some of the suggestions made by the Petitioners are accepted, then there would be damage to the ecosystem and wildlife, rather than ameliorating their conditions.

16. Mr. Waradkar, in his affidavit dated 23.10.2018, has

disclosed that from out of 729 hectares which were leased for mining, about 80 hectares were broken and worked before the mines were closed. He has stated that the broken areas include about 8 hectares of deep mining pits, which have since become permanent water bodies. He has stated that total area of the sanctuary is 211.05 sq. kms. or 21,150 hectares and the actual mined area is about 0.4 of the total area. He has also stated that now almost 15 years have lapsed since any mining activity was carried out within the boundaries of the NWLS. He has stated that over the period of time, several steps were taken for restoration and rehabilitation which has yielded good results.

17. On the aspect of measures undertaken by the Forest Department, this is what Mr. Waradkar has stated in paragraphs 11 and 12 of his affidavit dated 23rd October, 2018:

“11. I say that to mention some of the measures, these Respondents have carried out the following activities with a view to re-vegetate and stabilize the broken mined areas and the dumps which existed within the Sanctuary area:

- a. pilot project was initiated by re-planting an area of 9.4 hectares of mining dump in the lease T.C. No.3/41 during the year 2011-12 and the plantations were maintained for 3 subsequent years from 2012-13 to 2014-15.*

- b. During the year 2017-18, about 2 hectares of blank depression next to the main mining pit of mine in lease T.C. No.42/57 at Tudov village, part of which falls inside Netravali Wildlife Sanctuary, was taken up for planting. On the boundary of this, saplings of local hardy tree species have also been planted in multiple rows.*
- c. During the current financial year 2018-19, tree plantations of local species, including fruit bearing, Ficus etc, have been taken up in an area of 3 hectares in the lease T.C. No.5/50 at Villiena village and 5 hectares in T.C. No.42/57 at Tudov village.*
- d. While in smaller mines which were partly broken up and were having lesser disturbed area, the effective protection provided to the NWLS over the years has resulted in natural regeneration of grasses and other vegetation. However steep exposed slopes have not been touched as there were chances of them getting destabilized. Some species like Ficus and some grasses have been found growing naturally on them.*
- e. Now marks and feeding signs of Gaur, Sambar, Spotted Deer, Leopard, Palm Civet, Porcupine and scats of leopard and droppings of Porcupine etc. are regularly found in these closed mine areas which are also recorded in the camera traps. This has happened as vegetation cover has improved and some deeper mine pits now retain water throughout the year. These areas also have healthy insect and bird population, especially in and around mining dumps.*

f. In addition the Department has carried out plantations and habitat improvement in 59.2 hectares of other degraded areas and in plantations of exotic species which are not very suitable for the wildlife, in NWLS between 2012 and 2018.

12. I say that these Respondents engage local persons for various activities such as plantations, soil and water conservation, protection of plantations, etc. which are regularly carried out within the Sanctuary, under the supervision of the Officers of the Forest Department. I say that all these efforts made by these Respondents have resulted in improvement in the quality and density of forests and linked habitats and more importantly, in increase of population of wild animals within the Sanctuary.

I say that the apprehension of contamination of the water bodies/stream are not tenable. I say that recently, the Department had collected water samples from two locations, one from the water stream inside the Sanctuary and other from the water body which has formed in the mining pit, and had submitted the same to the Laboratory of the Directorate of Health Services, Environmental and Pollution Control Wing, Panaji for testing. I say that the Water Analysis Reports of both the samples issued on 19.10.2018 show that the samples conform to the limits prescribed for drinking water.

Annexed hereto as ANNEXURE RA COLLY is a copy of a Report prepared by the Forest Department showing the various activities undertaken by the Department and

the present day on loco position as far as flora and fauna prevailing within the precincts of the Sanctuary and copies of the Water Analysis Reports dated 19.10.2018”

18. Mr. Waradkar, in his affidavit dated 23.10.2018 has further stated that the State Board for Wildlife has already been apprised of the work done in the area, as well as other areas which form the Western Ghats and areas that are suitable for declaration as Tiger Reserve and the work of survey and demarcation of the proposed Core and Buffer Zones of the Tiger Reserve, including the Sanctuary is presently in progress.

19. Mr. Waradkar, in his affidavit dated 23.10.2018, has further stated that there was field inspection of the Sanctuary by the Principal Chief Conservator of Forests and after which measures such as seed bombing of steep mine slopes, use of leaf litter mulch, compost and waste of culture medium used in mushroom farms and other measures to improve the vegetation and re-vegetation and speed up growth in some infertile areas has been taken up. He has stated that any work that is to be done in the Sanctuary, has to be done in a careful and scientific manner to ensure that there is no adverse impact on the existing ecosystem. He has stated that any disturbance of areas and pits which have stabilized over such a long period of time, rather than helping the ecosystem, has the propensity

of causing damage to the existing habitat and ecosystem which may not be visible to the common man and may undo the various positive effects and measures that have been taken by the Forest Department in the Sanctuary over a period of time.

20. Finally, Mr. Waradkar, in his affidavit dated 23.10.2018, has assured this Court that the Respondents are fully alive to their role and responsibility in conservation of the Sanctuary and improvement of the habitat and overall ecosystem within the Sanctuary and will take all possible steps for further improving the same in future.

21. Thereafter, Mr. Sanjay Waradkar filed an additional affidavit on 1st February, 2019, mostly in the context of certain objections raised by and on behalf of the Petitioners to the report annexed to his earlier affidavit.

22. In the context of the water bodies which have formed in the mining pits, Mr. Waradkar has stated that these water bodies are now permanent water bodies, in which water is available throughout the year for the use of the animals. He has stated that the suggestions made by the learned Advocate General for vegetation and creating a better access for the animals to reach the water bodies, have already been considered by the Department and included in the restoration

plan which is submitted to this Court.

23. Mr. Waradkar has disagreed with the suggestions made by and on behalf of the Petitioners on the issue of back-filling of the pits by pointing out that this will destroy the ecosystem and habitat that has developed over last two decades. He has also denied existence of any unutilized dump in the Sanctuary and stated that any displacement of these dumps will adversely affect the existing ecosystem and will even destabilized the dumps which have already been stabilized.

24. Mr. Waradkar filed yet another affidavit on 4th September, 2019, in which he has reiterated that the Forest Department has carried out various activities like plantations, soil and water conservation measures inside the NWLS. He has pointed out that the Forest Department has prepared a timeline for rehabilitation of balance mined areas in the Sanctuary and the same is contained in the Report appended to the Affidavit dated 23rd October, 2018. He has pointed out that the timeline specifies the three year schedule in which the plantation will be carried out, along with its maintenance. He has stated that the Department will plant indigenous pioneer species like Macaranga and hardy Ficus, etc. He has admitted that considering the poor and refractory soils and difficult site conditions

in the broken areas of the mines, there is possibility that the mortality can be higher than the normal. He has stated that the Department will take appropriate measures, so as to improve the soil conditions in these areas, thus decreasing the mortality rate. He has also stated that if needed, the plantations will be maintained beyond the three years maintenance period. He has once again reiterated that the Respondents are fully conscious of their responsibility in the conservation and protection of the Sanctuary and improvement of the habitat and overall ecosystem within the Sanctuary.

25. Mr. Waradkar, along with his affidavit dated 4.9.2019, has submitted the following timeline for rehabilitation of balance mined areas at the NWLS:

Timeline for Rehabilitation of Balance Mined Areas situated in
Netravali Wildlife Sanctuary.

Year : 2019-2020

Sr. No.	T.C.No.	Village	Taluka	Plantations	Seeding (Using earthen balls)
1	3/41	Bhati	Sanguem	5 Ha New Plantation.	--
2	8/54	Mangal	Sanguem	5 Ha New Plantation.	--
3	42/57	Tudov	Sanguem	--	2 Ha.
4	42/57	Tudov	Sanguem	5 Ha 1 st year maintenance**	----

5	42/57	Tudov	Sanguem	2 Ha (Grassplot) 2nd year maintenance **	---
6	5/50	Villiena	Sanguem	3 Ha 1 st year maintenance**	---

** includes Gap plantation and Casualty replacement.

Year : 2020-2021

Sr. No.	T.C.No.	Village	Taluka	Plantations	Seeding (Using earthen balls)
1	90/53	Verlem	Sanguem	5 Ha	2 Ha
2	42/54	Verlem	Sanguem	5 Ha	1 Ha
3	3/41	Bhati	Sanguem	5 Ha 1st year maintenance **	--
4	8/54	Mangal	Sanguem	5 Ha 1 st year maintenance**	----
5	42/57	Tudov	Sanguem	5 Ha 2nd year maintenance **	2 Ha. (Re-seeding if required)
6	5/50	Villiena	Sanguem	3 Ha 2nd year maintenance**	---

** includes Gap plantation and Casualty replacement.

Year : 2021-2022

Sr. No.	T.C.No.	Village	Taluka	Plantations	Seeding (Using earthen balls)
1	22/51	Verlem	Sanguem	5 Ha	1 Ha
2	40/52	Verlem	Sanguem	5 Ha	1 Ha
3	90/53	Verlem	Sanguem	5 Ha 1st year maintenance	2 Ha. (Re-seeding if

				**	required)
4	42/54	Verlem	Sanguem	5 Ha 1st year maintenance**	1 Ha. (Re-seeding if required)
5	3/41	Bhati	Sanguem	5 Ha 2nd year maintenance **	---
6	8/54	Mangal	Sanguem	5 Ha 2nd year maintenance**	---

** includes Gap plantation and Casualty replacement.

26. Upon due consideration of the submissions made by Ms. Alvares and Mr. D. Pangam, learned Advocate General, we are satisfied that even the restoration or rehabilitation measures to be undertaken inside the Sanctuary cannot be aggressive so as to render the cure worst than the disease itself. On this basis, we agree with the learned Advocate General that any activity of flattening or relocating of the dumps, which have, to a great extent stabilized, will not be in the interest of the protection of the ecosystem in the NWLS, including the ecosystem which has since developed over last two decades even in the broken areas. The suggestions given by the Petitioners have been considered by the Respondents. However, we agree with the learned Advocate General that the Forest Department may not be in a position to implement all such suggestions.

27. On the aspect of rendering water pits more accessible to wild animals, the learned Advocate General stated that efforts in this directions have already been taken and further efforts will surely be taken by the Forest Department to ensure that these water pits are made more accessible for such areas.

28. The learned Advocate General, in the context of some of the photographs placed on record by the Petitioners, has submitted that there will be proper maintenance of areas where plantation has been undertaken. This was mainly in the context of certain photographs which showed vast silica plants, in which some recent plantation was seen to be carried out. The learned Advocate General assured this Court that possible measures will be taken for restoration and rehabilitation, as long as such measures do not themselves disturb the existing ecosystem and the natural habitat in the Sanctuary.

29. On the earlier occasion, the Forest Department had not only given several assurances, but the Forest Department was further directed to file compliance report every year, on or before 30th January, beginning from 2013. Though some work may have been undertaken by the Forest Department, it cannot be said that the various assurances that were given to the Court in PIL Writ Petition

No.28/2011, were fulfilled. In particular, no annual reports were filed though there was a specific direction for filing of the same. On this occasion, however, we expect the Forest Department to comply with its assurances, with greater level of seriousness. We appreciate the several assurances contained in the affidavit of Mr. Sanjay Waradkar and we hope and expect that at least this time all such assurances will be complied with, so that by the time the next compliance report is submitted, even the Petitioners will have no serious cause to complain about the non-implementation.

30. Accordingly, we accept the various assurances given by and on behalf of the Forest Department, as undertakings given to this Court. We direct the Respondents to comply with all such assurances and to take all effective measures for rehabilitation of the broken mining areas in the NWLS, consistent with their own assurances as reflected in the affidavits and the report filed in this matter. We also direct the Forest Department to adhere to the timeline indicated by them, so that there is no unnecessary delay in matters of compliance.

31. We find it quite unfortunate that both, the Indian Bureau of Mines, as well as the State Government, virtually expressed their helplessness in seeking recoveries from the erstwhile leaseholders on

account of whose activities the State is required to expend considerable amounts towards rehabilitation of these areas at the NWLS. The learned Advocate General has, however, stated that the State will explore possibilities of recovering such amounts from such leaseholders, no doubt, in accordance with law and by complying with the principles of natural justice. The learned Advocate General has, however, stated that it will not be possible for him to give any firm assurance or make any commitment on this issue, because legality of such recoveries will have to be studied and explored.

32. According to us, as a result of this public interest litigation, as also the non-adversarial approach on the part of the Respondents, at least something has been achieved in the context of rehabilitation of the broken mines areas within the NWLS. No doubt, further measures are necessary and we hope and trust that the Forest Department will stand by the assurances given by them in their affidavits and reports. Therefore, by accepting such assurances and the statements as undertakings to this Court, we dispose of the present PIL Writ Petition.

33. Once again we express our gratitude to Ms. Norma Alvares, Mr. Dattaprasad Lawande, former Advocate General and Mr. D. Pangam, the present Advocate General, State of Goa for the

assistance rendered by them in attempting to resolve this issue of rehabilitation of the broken mines areas in Netravali Wildlife Sanctuary.

34. Rule in the Petition is disposed of in the aforesaid terms. Though the Petition is disposed of, we direct the Respondents, including, in particular, Respondent No.1 to file compliance reports on or before 31st December of each year, for a period of at least three years, in the first instance. The first of such reports to be filed on or before 20th December, 2020. Copies of such compliance reports to be furnished to Ms. Norma Alvares, learned Counsel for the Petitioners, in advance.

Nutan D. Sardesai, J.

M.S. Sonak, J.