IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(APPELLATE JURISDICTION)

(REGULAR SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908)

IN THE COURT OF THE SENIOR CIVIL JUDGE & C.J.M AT CHIKMAGALUR

O.S.NO.01/2008

IN THE COURT OF THE PRL. DISTRICT JUDGE AT CHIKMAGALUR

R.A.No.32/2013

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

R.S.A.NO. /2014

	RANK OF THE PARTIES IN		
	Trial Court	Appellate Court	High Court
BETWEEN:			
1. Sri. D.V. Girish S/o. Sri. D.P. Vasantha Kumar, Aged about 44 years, Coffee Planter, Wild-Life Activist Kaimara Post, Chikmagalur Taluk-577 156	1at Plaintiff	1st Appellant	1st Appellant
2. Sri. S. Girijashankar S/o. Late Sri. Shankaranarayan, Aged about 57 years, Editor and Publisher, Janamitra, Daily local newspaper, Anjaneya Temple Street, Vijayapura Extension, Chikmagalur City-577 101	2nd Plaintiff	2nd Appellant	2nd Appellant
3. Sri. Manishkumar S/o. Sri. Madanchand, Aged about 30 years, Coffee Planter and Businessman, M.G. Road, Chikmagalur	3rd Plaintiff	3rd Appellant	3rd Appellant
4. Sri. G. Veeresh S/o. Sri. Gangadharaaiah H.,			

Aged about 27 years,
C-95, 2nd Cross, 2nd stage, C.D.A Layout,
Kalyanagar, Jyothinagar Post,
Chikmagalur- 577 102 4th Plaintiff 4th Appellant 4th Appellant

AND:

1. Government of Karnataka by
its Chief Secretary, Vidhana Soudha,
Bangalore 560 001.

2. Deputy Conservator of Forest,
Bhadra Wildlife Division,
Bhadra Wildlife Sanctuary,
Forest Officer Complex,
Chikmagalur.

3. Special Officer, Tourism,
Government of Karnataka,
2nd floor, Mathias Tower,
I.G. Road, Chikmagalur.

4. Deputy Commissioner,
Chikmagalur District,
Chikmagalur- 577 101.

Defendant Respondent Respondent

MEMORANDUM OF REGULAR SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

The Appellants above named most respectfully submit as follows:

1. The address of the Appellants for the purpose of service of summons, notices, etc. from this Hon'ble Court is as shown in the cause-title and also that of their counsel Ms. Jayna Kothari, Ms. Aparna Ravi and Mr. Kunal Kulkarni, Advocates, at D6, Dona Cynthia Apartments, 35, Primrose Road, Bangalore- 560 025.

2. The addresses of the Respondents for the purpose of service of notices, etc., from this Hon`ble court is as shown in the cause title of the Respondents.

3. This Regular Second Appeal is filed by the Appellants challenging the Judgment and Decree of Dismissal of Suit dated 20.10.2014, passed by the Hon'ble Prl. District Judge at Chikmagalur, in R.A.No. 32/2013. The original suit in this matter was filed by the Appellants herein, all being wildlife conservationists, in public interest. The main concern in the suit and this appeal is the Suit Schedule Property which falls in Sy. No. 226 and 228 of Siravase village, Jagara Hobli of Chikmagalur, which is in the core of the Bhadra Wildlife Sanctuary in the Western Ghats and has been declared as reserve forest. The Respondents have carried out construction work in the Suit Schedule Property and set up a huge tourism camp, in violation of the provisions of the Forest Conservation Act, which requires that without the prior approval of the Central Government there cannot be any use of any forest land or any portion thereof for any non forest purposes. The Learned Trial Judge and the Hon'ble First Appellate Court have without any legal basis held that there was no violation of Section 2 of the Forest Conservation Act. The construction work is for setting up a tourist camp in the forest and the said tourist camp is not related to conservation or development of wildlife, and would in fact be detrimental to the wildlife and hence the finding of the Learned First Appellate Judge deserves to be set aside. Hence this Regular Second Appeal.

(A certified copy of the judgment and decree dated 20-10-2014 passed in R.A.No.32/2013 is herewith produced and marked as **ANNEXURE – A**)

(A copy of the judgment dated 31.01.2013 in O.S. No. 1 / 2008 is annexed herein and is marked as **ANNEXURE – B**)

BRIEF FACTS OF THE CASE

4. It is submitted that the original suit in this matter was filed by the Appellants herein, all being wildlife conservationists, in the public interest. The main concern in the suit and this appeal is the Suit Schedule Property which falls in Sy. No. 226 and 228 of Siravase village, Jagara Hobli of Chikmagalur, which is in the core of the Bhadra Wildlife Sanctuary in the Western Ghats and has been declared as

reserve forest. Bhadra Wildlife Sanctuary situated in the midst of Western Ghats in Chikmagalur and Shimoga districts of Karnataka has a substantial tiger population and was declared as the 25th Project Tiger of India in 1998.

5. It is submitted that the Appellants herein, who are wildlife conservationists, came to know in 2007 that the 2nd Respondent was proposing to build structures in the Suit Schedule Property, to develop the same into a tourist camp under the name of Muthodi Nature Camp in the Bhadra Wildlife Sanctuary. The Appellants also obtained information that the 4th Respondent obtained finance under the Bhadra Tiger Reserve project and Bhadra Wildlife Sanctuary, Chikmagalur for Rs. 94 lakhs/- but this amount in reality was to be used for construction of a tourist nature camp and its electrification which was to be built in the Suit Schedule Property under the name of Muthodi Nature Camp. The 4th Appellant under the Right to Information Act had also obtained a letter from the Executive Engineer (Elec.) MESCOM that the 2nd Respondent has requested permission for laying HT electric lines for 9 kms. With 223 poles and a L.T line for 1 km. with 20 poles, the estimated value of laying electric lines was about Rs. 42 lakhs.

(A copy of letter dated 1.3.2007 marked as Exhibit P24 in the suit is annexed herein and is marked as **ANNEXURE – C**)

(A copy of letter dated 08.01.2007 marked as Exhibit P22 in the suit is annexed herein and is marked as **ANNEXURE – D**)

(A copy of letter dated 17.01.2007 marked as Exhibit P26 in the suit is annexed herein and is marked as **ANNEXURE – E**)

6. The Appellants objected to this activity on the grounds that the construction and the laying of the electrical lines was not permitted, would involve the cutting of several trees in the reserve forest, the disturbance to the wildlife and was in violation of the wildlife and forest laws and regulations and would have a detrimental impact on the forests and wildlife in the Bhadra Tiger Reserve.

7. It is submitted that no permission from the Central Government was obtained for the clearing of trees, building of structures and laying of electric lines in Muthodi Nature Camp by the Respondents as required under Section 2 of the Forest (Conservation) Act of 1980 (the "Forest Conservation Act"). Despite not obtaining permission the 2nd Respondent began construction work in the Suit Schedule property in gross violation of Section 2 of the Forest Conservation Act. The Respondents started clearing a large portion of the forest in the core of the Tiger Reserve, and started digging pits for laying the foundation and building of super structures.

9. Aggrieved by the Respondents' gross violation of the Forest Conservation Act and the guidelines of National Tiger Conservation Authority (the "NTCA Guidelines") and concerned about the damage, destruction and disturbance that a high end tourism venture in Muthodi Nature Camp in the Suit Schedule Property would cause to the wildlife and forests in the area, the Appellants filed a suit in O.S.No.1/2008 on the file of the Senior Civil Judge & C.J.M., Chikmagalur, against the Respondents praying for:

(a) a Declaration that the suit schedule property is part of the Bhadra Wildlife Sanctuary, which is a Reserve Forest Land and

(b) a Permanent Injunction restraining the 2nd respondent and his subordinates such as R.F.Os and other officers and servants from cutting trees and laying any H.T. electric line or L.T. electric line or raising any structure in the schedule property and, if any structure is raised, for mandatory injunction for restoration of the schedule property as it stood prior to the filing of the suit.

(A copy of the plaint in O.S. No. 1 / 2008 is annexed herein and is marked as **ANNEXURE – F**)

8. After the suit was filed, the 2nd Respondent was served with a suit summons and application for an ad-interim injunction on 05-01-2008. The 2nd Respondent however continued with the construction work in the Suit Schedule Property. The Appellants produced photographs with negatives showing the destruction of

trees, a part of the forests having been cleared and the Respondents having dug pits for laying the foundation for the structures to be constructed in Muthodi Nature Camp. Despite all of this, no interim injunction order was granted. Thereafter the learned judge of the Trial Court framed the following five issues:

(i) Whether the appellants proved that the suit schedule property is a part of the Bhadra Wildlife sanctuary, which is a reserve forest land?

(ii) Whether the appellants proved that the 2nd respondent has continued the construction work in gross violation of the provisions of the central Forest (Conservation) Act 1980?

(iii) Whether the suit is not maintainable as contended in the written statement?

(iv) Whether the appellants are entitled for the relief as sought for?

(v) What is the order or decree to be passed?

(A copy of the Written Statement is annexed herein and is marked as **ANNEXURE – G**)

(A copy of the Additional Written Statement is annexed and is marked as **ANNEXURE – H**)

11. The Learned Trial Court Judge vide his judgment and decree dated 31.1.2013 answered the first question in the affirmative and held that the Suit Schedule Property was part of the Bhadra Wildlife Sanctuary and a reserve forest, a fact that had not been denied by the Respondents. However, the Learned Judge then answered the following three questions in the negative, holding that the 2nd Respondent had not violated the provisions of the Forest Conservation Act by continuing construction work as the Court arbitrarily and unreasonably held that the construction work in the Suit Schedule Property of Muthodi Nature Camp related to eco-tourism activities and fell within the exception in clause (b) of Section 2 of the Forest Conservation Act and, therefore, the prior approval of the Central Government was not necessary. Such a finding is legally incorrect and baseless. The Trial Court was also of the opinion, from the materials placed on

record that the works which were taken up by the 2nd Respondent in Muthodi Nature Camp were lawful and had been sanctioned by the State Government and Chief Wildlife Warden as per section 29 of the Wildlife Protection Act 1972 and dismissed the suit.

12. Aggrieved by the said judgment of the Trial Court dated 31.01.2013, the Appellants preferred a first appeal in R.A.No. 32/2013 on the file of Prl. District Judge at Chikmagalur. The Learned Judge of the First Appellate Court after hearing on both the sides framed four points:

(i) Whether the appellants proved that the construction work undertaken by the 2nd respondent in the plaint schedule property is in gross violation of the provisions of the Central act of Forest Conservation Act, 1980?

(ii) Whether the suit is maintainable?

(iii) Whether the appellants are entitled for the reliefs sought for?

(iv) Whether the judgment and decree passed by the Trial Court is erroneous and calls for the interference by First Appellate Court?

13. The First Appellate Court again confirmed the finding of the Trial Court that the Suit Schedule Property was located in the core of the Bhadra Tiger Reserve, which is reserve forest land, but held that the Appellants did not prove that the construction work was undertaken by the 2nd Respondent in the Suit Schedule Property was in violation of the Section 2 of the Forest Conservation Act. According to the First Appellate Court, the State Government, without the prior approval of the Central Government, could take up the proposed works in Muthodi Nature as the proposed works came under the purview of the proviso explanation (b) in Section 2 of the Forest Conservation Act. The First Appellate Court also held that documents produced on behalf of the Respondents showed that the proposed work to be carried out in the Muthodi Nature Camp had been approved by the State Government and permission had been given by the Chief Wildlife Warden as required under Section 29 of the Wildlife Protection Act, 1972

(the “Wildlife Protection Act”). Based on the above, the First Appellate Court held that the judgment of the Trial Court was not erroneous and interference by the First Appellate Court was not called for. The Court dismissed the appeal with costs and confirmed the judgment and decree of the Trial Court in O.S. No. 01/ 2008 dated 31.01.2013 vide order dated 20.10.2014.

14. It is submitted that taking advantage of the decrees passed in O.S. No. 01/2008 and R.A. No. 32/2013, the Respondents hectically continued and completed the illegal constructions in Muthodi Nature Camp and have also started using the area as a commercial tourist venture. Presently, in the Suit Schedule Property in the Muthodi Nature Camp, there are facilities to provide accommodation for 30 persons and this is being used as a commercial tourist venture on a daily basis with high tariffs. More than 30 persons stay in the constructed structures every night, with many more persons required for food, travel and other arrangements. The Appellants have received information that the Respondents may also plan to expand the said camp and start more construction as well.

(Photos of the construction and the tourist camp that were submitted before the Trial Court are annexed herein and are marked as **ANNEXURE – J** collectively)

15. Aggrieved by the said judgment and decree and concerned by the continued illegal activities of the Respondents in developing a high end commercial tourist venture in the heart of a protected national wildlife sanctuary, the Appellants have preferred this Appeal on the following grounds:

GROUNDS:

16. **THAT** the First Appellate Court committed an error in upholding the decision of the Trial Court that the 2nd Respondent’s actions of cutting down trees, laying of electric lines and raising structures in Muthodi Nature Camp did not require the permission of the Central Government under Section 2 of the Forest Conservation Act. Section 2 of the Forest Conservation Act reads as follows:

"2. Restriction on the de-reservation 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 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."

The above Section states that the State Government without the prior approval of the Central Government shall not make any orders regarding using of any forest

land or any portion thereof for any non forest purposes. The works carried out by the Respondents for certain tourism activities in Muthodi Nature Camp amount to non-forest activities mentioned in clause (ii) of Section 2 of the Forest Conservation Act and, therefore, require the approval of the Central Government.

17. **THAT** the First Appellate Court erred in giving a finding that the construction work taken up by the Respondents in the Muthodi Nature Camp came under Explanation (b) in Section 2 of the Forest Conservation Act and, therefore, could be taken up without the approval of the Central Government. The only kind of activity that comes within the provisio to Section 2 of the FC Act would be work that is " ***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."*** The construction of the Muthodi Nature Camp in the Suit Schedule Property is not a work ancillary to the conservation, development and management of forests and wildlife and, therefore, does not fall within Explanation (b) of Section 2 of the Forest Conservation Act. The construction work is for setting up a tourism camp in the forest and the said tourist camp is not related to conservation or development of wildlife, and would in fact be detrimental to the wildlife. The proviso in Explanation (b) relates to activities designed to better manage and conserve the reserve forest land and wildlife. Thus, any activities that fit in this proviso must necessarily be to better serve the interests of the forest land and wildlife conservation. The activities of the Respondents were intended for the improvement of infrastructure to serve tourists and cannot be considered activities ancillary to wildlife conservation. The fact that the infrastructure is currently being used to serve tourists in a commercial tourist venture provides further evidence that the activities of the Respondents were clearly not carried out for the purpose of improving forest management and wildlife conservation and hence the finding of the Learned First Appellate Judge deserves to be set aside.

18. **THAT** the legal requirement of obtaining Central Government approval before undertaking any non-forest activities in a reserved forest area was highlighted by the Hon'ble Supreme Court in the case of ***Tarun Bharat Sangh vs. Union of India & Ors. 1993 Supp(3) SCC 115*** where the Court stated:

> *"Once an area is declared as a protected forest, it comes within the purview of the Forest (Conservation) Act, 1980. It becomes a forest land within the meaning of Section 2.* ***The effect of this position is that no non- forest activity can be carried on in the said area except with the prior approval of the Central Government. Even the State Government cannot carry on any such non-forest activity in the said area without such prior approval.*** *Thus, the grant of mining leases/licences and their renewal by the State Government, without obtaining the prior approval of the central government, in respect of the mines situated within the protected forest, after January 1, 1975 is contrary to law."*

The Kerala High Court also emphasised the need for Central Government approval in the case of ***Jairaj A.P. vs The Chief Conservator Of Forests, AIR 1996 Ker 362*** where the Court held that:

> *"The requirement in Section 2 for prior approval of Central Government must be strictly construed as any relaxation of it would be perilous to the fast depleting forest wealth of the country. One of the directive principles of State Policy is to "safeguard the forests and wild life of the country" (Article 48A of the Constitution). One of the fundamental duties of every citizen of India is to protect and improve forests (Article 51-A Clause (g)). So clearance of forest area should be allowed only as a stark exception. When Parliament insisted that such clearance can be made only with the prior permission of Central Government the rule should be rigorously followed. Forest wealth is already an endangered bounty of nature."*

In the aforementioned case, the Kerala High Court held that the State Government required the permission of the Central Government in order to

construct a “Forest Lodge” in the buffer zone of the Parambikulam Wildlife Sanctuary and issued an order prohibiting the State Government from proceeding with the construction in the absence of such approval. The activities of the Respondents go far beyond those that were contemplated in ***Jairaj A.P.*** as they involve running a full-fledged commercial tourist venture in the core area of the Bhadra Tiger Reserve and clearly require the permission of the Central Government. The First Appellate Court, therefore, committed an error in upholding the judgment of the Trial Court that permission of the Central Government was not required.

19. **THAT** in the case of ***Union of India and Ors vs Kamath Holiday Resorts Pvt. Ltd,*** AIR 1996 SC 1040, the Hon’ble Supreme Court held that the Collector of the Union Territory of Daman must obtain prior permission from the Central Government under Section 2 of the Forest Conservation Act in order to lease out a site in the reserved forest area to put up a snack bar and a restaurant to cater to the needs of tourists visiting the forest. The activities of the Respondents in the Muthodi Nature Camp involve not just facilities for tourist visits, but also structures that allow tourists to stay in the Muthodi Nature Camp overnight. These activities are non-forest activities that would have a detrimental impact on and result in disturbance to the wildlife and forests in the area and require the approval of the Central Government under the Forest Conservation Act.

20. **THAT** by the Respondents’ own admission, the works undertaken by them in Muthodi Nature Camp were done without any permission from the Central Government. This fact has also been taken on record by the Trial Court and the First Appellate Court. The 2nd Respondent has now completed the construction works and has established a commercial tourist venture without the approval of the Central Government in gross violation of the Forest Conservation Act and as such the said illegal acts of Respondents have to be restrained.

21. **THAT** the First Appellate Court failed to appreciate that the actions of the respondents in putting up the construction in the Suit Schedule Property being the Muthodi Nature Camp was in the core tiger areas and in violation of several provisions of the National Tiger Conservation Authority Guidelines 2012 ("NTCA Guidelines") and the Guidelines for Tourism in and Around Tiger Reserves ("GTTR"), which are a part of the NTCA Guidelines. Section 10.17 of the NTCA Guidelines states that "***However, no new tourism infrastructure should be permitted in such core and critical tiger habitats."*** Section 2.2.8 of the GTTR has a similar provision and Section 2.2.8.1 of the GTTR states that: "***Any core area in a tiger reserve from which relocation has been carried out, shall not be used for tourism infrastructure."*** The construction of the structures for the development of tourism by the Respondents in the Muthodi Nature Camp, which is in a core tiger reserve area, amount to new tourist infrastructure which have been constructed in gross violation of the NCTA Guidelines and the GTTR and could never have been permitted. It is evident that the infrastructure that has been constructed by the Respondents in Muthodi Nature Camp does not conform to the requirements provided above. While the NTCA guidelines specifically request for solar energy, the Respondents provided for conventional electricity, fully aware of the impact this would have in the heart of a protected tiger reserve. The structures that have been constructed in the Muthodi Nature Camp include stay units, a kitchen, an interpretation center, a dining place, etc. The Respondents have made attempts to provide maximum facilities in this regard, which have involved digging pits and the clearing the forest for laying the foundation for super structures. Every day a number of tourists visit the Muthodi Nature Camp and use this infrastructure and tourist and staff also stay in the camp overnight. The infrastructure that the Respondents have constructed is in clear violation of the GTTR. Furthermore the tourist activities being carried out in Muthodi Nature Camp, including allowing tourists to stay overnight in the camps and providing for heavy duty cooking, do not conform to non-consumptive, regulated activities as required under Section 2.2.8 of the GTTR, do not in any promote the conservation of wildlife in any way and should be stopped.

22. **THAT** Section 2.2.6 of the GTTR imposes restrictions on any existing residential infrastructure inside the core areas, which should be regulated to adhere to low ecological impact by the Local Advisory Committee. Section 2.2.6 of the GTTR states: "***Existing residential infrastructure inside core or critical tiger habitats shall be strictly regulated to adhere to low ecological impacts as decided by the Local Advisory Committee on a site specific basis."*** On the other hand, the infrastructure that has been constructed by the Respondents in Muthodi Nature Camp have caused widespread destruction to the environment in what is a core area in the tiger habitat in gross violation of the NTCA Guidelines and the GTTR.

23. **THAT** Section 2.2.12 of the GTTR requires that "***Permanent tourist facilities located inside core or critical tiger habitats, which are being used for wildlife tourism shall be phased out on a time frame decided by the LAC.***" The tourist facilities in the Muthodi Nature Camp are in the core area of the tiger reserve and, therefore, need to be phased out in accordance with Section 2.2.12 of the GTTR. The Respondents' activities in improving and rebuilding the facilities in the Muthodi Nature Camp instead of phasing them out is a clear violation of the GTTR and must be stopped.

24. **THAT** the First Appellate Court erred in not considering whether the Trial Court had adequately examined if the Chief Wildlife Warden had considered the NTCA Guidelines and GTTR when granting approval to the Respondents. As stated in paragraphs 21 to 23 above, the activities of the Respondents in the Muthodi Nature Camp are in violation of the NTCA Guidelines and the GTTR, including Section 10.17 of the NCTA Guidelines and Sections 2.2.6 and 2.2.8 of the GTTR. The State Government and Chief Wildlife Warden should not have given their approval for a project undertaken in the core area of a tiger reserve, when the activities did not comply with these guidelines. In fact the evidence placed on record by the Respondents and noted in the judgment of the First Appellate Court shows that the Chief Wildlife Warden suggested that the Respondents

explore conventional electricity instead of solar electricity, when the NTCA Guidelines and GTTR call for the use of solar energy as the laying of electric cables results in disturbance to the ecology of a tiger reserve. Section 2.2.10 of the GTTR specifically states: ***"Tourism infrastructure shall conform to environment friendly, low impact aesthetic architecture, including solar energy, waste recycling, rainwater harvesting, natural cross ventilation, proper sewage disposal and merging with the surrounding habitat."*** Thus, the granting of the permit was clearly done without an adequate assessment of whether or not the construction works would facilitate improvement or better management of the reserve forest, or whether they adhere to the essential guidelines.

25. **THAT** the First Appellate Court erred in upholding the judgment of the Trial Court that the Chief Wildlife Warden had properly granted a permit to the Respondents for their activities in Muthodi Nature Camp. The permit granted by the Chief Wildlife Warden was not issued in accordance with Section 29 of the Wildlife Protection Act, 1972. According to Section 29 of the said Act:

> ***"No person shall destroy, exploit or remove any wildlife from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal or its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wildlife Warden and no such permit shall be granted unless the State Government being satisfied that such destruction, exploitation or removal of wildlife from the sanctuary is necessary for the improvement and better management of wildlife therein authorises the issue of such permit."***

As per Section 29, the Chief Wildlife Warden may grant a permit for the destruction, exploitation or removal of wildlife from a sanctuary only where such actions are necessary for the improvement and better management of wildlife. The construction activities of the Respondents were undertaken in order to promote and develop tourism in the Bhadra Tiger Reserve and do not serve any

purpose related to the “improvement and better management of wildlife.” Thus, the State Government and the Chief Wildlife Warden did not validly exercise their authority in granting a permit for the Respondents’ activities pursuant to Section 29 of the Wildlife Protection Act and the First Appellate Court erred in holding that the project had been validly approved by the Chief Wildlife Warden.

26. **THAT** in the case of ***Essar Oil Ltd. Vs. Halar Utkarsh Samiti*** (2004) 2 SCC 392, the Hon’ble Supreme Court held that the State Government can order destruction, exploitation or removal of wildlife from a sanctuary only if its purpose is the improvement and better management of wildlife. In the aforementioned case, as the laying of the pipeline through the sanctuary was not for the improvement and better management of the wildlife, no permit could be granted under Section 29. Similarly, in the case of Halar Utkarsh Samiti through ***Prakash H. Doshi v. State of Gujarat*** (2001) 2 GLR 964, the Gujarat High Court held:

> *“The words as contained in Section 29, i.e. "unless" and "necessary" and the terms "for the improvement and better management of the wild life" therein are of vital importance and the touch stone should be the causal relationship for permission to destroy, exploit or removal of wild life only if such permission is necessary for the improvement and better management of wild life therein.*

The activities of the Respondents in the Muthodi Nature Camp are for activities unrelated to the betterment of wildlife in the area and are only for tourism, therefore, should not have been approved by the State Government and Chief Wildlife Warden pursuant to Section 29. Instead, the Respondents should have sought approval of the Central Government pursuant to Section 2 of the Forest Conservation Act.

27. **THAT** the First Appellate Court erred in accepting the contention of the Respondents that the order dated 25.11.2005 in I.A. 548 in W.P. 202/1995 of the Hon’ble Supreme Court permits the activities of the Respondents as such a contention is untenable. In the said order, the Hon’ble Supreme Court directed that various activities such as weeding, clearing and burning of vegetation for fire

lines, maintenance of fair weather roads, habitat improvement, digging, temporary water holes, construction of anti-poaching camps, chowkies, check post, entry barriers, water towers, small civil works, research and monitoring activities, etc. which are undertaken for the protection and conservation of the protected areas are permissible under the provision of Section 29 of the Wildlife Protection Act. However, these works are observed to be minor construction works, conducted on a small-scale. Further, the purpose of such works is the conservation and better management of wildlife. In contrast, the construction works that were undertaken by the Respondents were on a very large scale with the intention of providing the nature camp with maximum facilities. These activities involved clearing of a number of trees and had a detrimental impact on the forest and wildlife. These activities were also not conducted for the purpose of conservation and better management of wildlife, but for the purpose of promoting tourism. The contention of the Respondents that eco tourism is an important tool for wildlife conservation is without merit in this case as the tourism infrastructure that the Respondents have constructed are on a large scale and have a high impact on the forest ecosystem and wildlife. Therefore, these works cannot be grouped with the works mentioned in the above mentioned Supreme Court Order and are not permissible as per the above stated Order.

28. **THAT** the First Appellate Court erred in not considering whether the Trial Court had adequately examined if the Chief Wildlife Warden had properly exercised its authority in granting the permit. Section 29 of the Wildlife Protection Act requires the State Government and the Chief Wildlife Warden to grant approval only after being satisfied that the proposed activities in question are for the improvement and better management of wildlife. The Respondents have produced no evidence that any appropriate evaluation was done by these authorities to ensure that the works proposed would be essential for the improvement and better management of wildlife before granting the permit.

29. **THAT** the First Appellate Court erred in holding that the permit granted by the Chief Wildlife Warden was an act done in good faith and, therefore, protected under Section 60 of the Wildlife Protection Act. The acts of the Chief Wildlife Warden cannot be termed as an act done in good faith as there is no evidence that the State Government and the Chief Wildlife Warden properly evaluated the resulting ecological damage from the project or the project's compliance with essential guidelines for a tiger reserve when granting the permit. The activities undertaken by the Respondents do not conform to the NTCA guidelines and cannot be said to be for the improvement and the better management of the wildlife.

30. **THAT** the Learned First Appellate Judge erred in finding that Section 33 (a) of the Wildlife Protection Act permits the Chief Wildlife Warden to grant permission for the activities of the 2nd Respondent in Muthodi Nature Camp. Section 33 (a) of the Wildlife Protection Act includes a proviso that "***no construction of commercial tourist lodges, hotels, zoos and safari parks shall be undertaken inside a sanctuary except with the prior approval of the National Board.***" The activities of the 2nd Respondent involve the construction of tourist infrastructure in the core area of a sanctuary and the Respondents have produced no evidence that the Chief Wildlife Warden obtained the prior approval of the National Board. In the absence of such evidence, the Learned First Appellate Judge's finding that the Chief Wildlife Warden was acting within the powers granted under Section 33(a) is baseless and deserves to be set aside.

31. **THAT** the First Appellate Court failed to appreciate that there was no evidence of any kind placed by the Respondents to show that they were carrying on only activities related to eco-education camps for school children in the Suit Schedule Property, except for the statement made by DW1 in his evidence and cross examination. No documentary evidence of any kind to show this was produced, and without the production of any evidence, the Learned First Appellate Judge erroneously held that this finding was true on the ground that the Plaintiffs had not denied the same. This is an incorrect finding as the PW1 in his evidence had

never admitted that the Muthodi camp was for eco-education camps for children and in fact had stated that close to 3000 to 4000 people were using it every year. In fact, the advertisements of the Respondents themselves for Muthodi Nature Camp in the public domain and media do not refer to it as an eco-education camp for school children and is addressed to the general public. Hence such a finding is baseless and not supported by evidence and deserves to be set aside.

32. **THAT** the Learned First Appellate Judge erred in giving a finding that the Respondents had carried out construction in the Suit Schedule Property from the year 1983 onwards and made more improvements in 1986-87, 1992-93, 2003-04 and 2005-06 without the Respondents themselves providing any evidence on the said history of the construction. Only because the Plaintiffs did not produce any evidence to contravene these averments, the Learned First Appellate Judge has given a finding in favour of the Respondents, without considering that the Plaintiffs would not be able to procure any documents relating to the construction carried out by the respondents. Such a finding, without any documentary evidence produced by the respondents is baseless and deserves to be set aside.

33. **THAT** the Learned First Appellate Judge failed to appreciate that the proposal made by the Respondents and approved by the Principal Chief Conservator of Forests (Wildlife) is not for ‘repair’ of the existing structures in the Suit Schedule property but for actually reviving the Muthodi Nature Camp which was covered in thick vegetation, and making all new structures such as construction of overhead tank, construction of pergola, construction of tent bases with attached bathrooms, construction of new kitchen, construction of store room, and other works, as provided in Exhibit D-3. Such construction to start the tourism facilities is not for repair and in violation of the NTCA Guidelines which require that even if there are any existing facilities in the core tiger areas, they ought to be phased out. Hence the order of the Learned First Appellate Judge is without appreciation of evidence on record and the NTCA Guidelines and deserves to be set aside.

34. **THAT** the Learned First Appellate Judge erred in finding that the Proceedings of the State Government regarding the Wilderness Tourism Policy provided in Exhibit D4 sanctioned the works of the Respondents in Muthodi Nature Camp as the Wilderness Tourism Policy states that wilderness tourism may only be carried in specified areas as determined by the Forest Department. The Respondents have provided no evidence as to whether the nature camp was in a specified area as specified by the Forest department and, therefore, this finding of the Learned First Appellate Judge is not based on any documentary evidence and deserves to be set aside.

35. **THAT** the finding of the Learned First Appellate Judge that the documents produced by the Respondents as Exhibits D5, D6 and D8 show that the activities of the respondents in the Suit Schedule Property were carried out with the approval of the relevant authorities is baseless. Exhibit D5 discloses a letter from the Deputy Commissioner of Chikmagalur granting permission to the Forest Department to demolish old and dilapidated houses, but does not state that these houses are located in the Muthodi Nature Camp. The Respondents have produced no evidence that this letter relates to the Suit Schedule Property or how it is relevant to their proposed works and in the absence of such evidence, the finding of the Learned First Appellate Judge is baseless. Exhibit D6 is a copy of an extract from an opinion book of tourists who have expressed a desire for additional facilities and does not constitute evidence that the relevant permissions have been obtained by the respondents for works in the Suit Schedule Property. In making this finding, the Learned First Appellate Judge erred in taking into consideration the demands of tourists in Muthodi Nature Camp without appreciating the requirements of Forest Conservation Act, the Wildlife Protection Act and the NCTA Guidelines. Exhibit D.8 is a letter written by the Deputy Commissioner, Chikmagalur to the 2nd Respondent regarding works to be carried out in Muthodi Nature Camp and does not represent evidence that the Respondents have received the sanction from the relevant authorities. In the absence of such documentary evidence, the Learned First Appellate Judge erred

in denying the injunction sought by the Appellants with respect to the construction activities in the Suit Schedule Property.

36. **THAT** the statement in paragraph 46 of the impugned judgment that the works of 2nd Respondent were carried out with the prior approval of the Central Government is factually incorrect. The Respondents have themselves admitted that no permission of the Central Government has been obtained and this fact has been taken on record by the Learned First Appellate Judge. Therefore, the finding in the said paragraph that the approval of the Central Government was obtained is incorrect, contradicts the evidence on record and deserves to be set aside.

37. **THAT** the impugned order suffers from various other legal infirmities, and viewed from any angle, the impugned order is bad in law and facts and is liable to be quashed by this Hon'ble Court.

38. The Appellants crave leave of this Hon'ble Court to raise any additional grounds as may be necessary at the time of considering the present Appeal.

39. The Appellants have not preferred any other Appeal on the same cause of action either before this Hon'ble Court or before any other Court of Law.

40. **VALUATION:** The suit in O.S. 1/2008 was filed by way of Public Interest Litigation under Section 44 of Karnataka Court Fees and Suits Valuation Act, 1958 and does not fall under Section 7(2) of the Act. Therefore, the valuation slip in Form No. 1 of the Rules of Practice is not applicable. A court fee of Rs. 50/- was paid by the Appellants in the First Appellate Court under Section 44 of the Karnataka Court Fees and Suits Valuation Act, 1958. A court fee of Rs.100/- is paid on the Memorandum of Regular Second Appeal under section 44 of the Karnataka Court Fees and Suits Valuation Act, 1958. The value of suit for purposes of Jurisdiction is Rs. 9,00,000/-.

PRAYER

WHEREFORE the appellants above named most humbly pray that this Hon'ble High Court may be pleased to: -

(a) Allow this Appeal and set aside the judgment and decree dated 20.10.2014 passed in R.A.No.32/2013 and the judgement and decree dated 31.1.2013 in O.S. No. 1 / 2008 produced as **ANNEXURE - A** and **ANNEXURE - B** respectively;

(b) Issue a permanent injunction restraining the 2nd Respondent and his agents and subordinates, from carrying out any construction in the Suit Schedule Property and restoring the Suit Schedule Property as it stood before the filing of the suit; and

(c) Award costs of the Appeal and pass any other order that this Hon'ble Court deems fit to be granted in the circumstances of the case in the interests of equity and justice.

SCHEDULE PROPERTY

Siravase Village Jagara Hobli, Chikmagalur Taluk

1. S.No. 226-Forest-Act.440-03 State Forest (Bhadra Wildlife Sanctuary)
2. S.No.228-Forest-Ac.1004-39 State Forest (Bhadra Wildlife Sanctuary) together bounded on East, West, North and South: Bhadra Wildlife Sanctuary.

Place: Bangalore
Date: Advocate for Appellants