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*Before*

**THE HONOURABLE HIGH COURT OF MATIL DANU**

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**Under Article 226 of the Constitution of Hindia**

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**GREEN CANVAS .....PETITIONER**

**v.**

**STATE OF MATIL DANU .....RESPONDENT**

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**LIST OF ABBREVIATIONS**

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&	And
¶	Paragraph
AIR	All India Reporter
Anr.	Another
Art.	Article
Co.	Company
Corpn.	Corporation
Ed.	Edition
Govt.	Government
Hon'ble	Honourable
i.e.	That is
Ltd.	Limited
MoEF	Ministry of Economic Affairs
NGT	National Green Tribunal
No.	Number
Pvt.	Private
PWD	Public Works Department
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
SEIAA	State Environment Impact Assessment Agency
U.S.	United States of America
v.	Versus
Viz.	Videlicet
Vol.	Volume
www	World Wide Web

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## INDEX OF AUTHORITIES

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## STATEMENT OF JURISDICTION

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**THE PETITIONER HAS FILED THE PUBLIC INTEREST LITIGATION BEFORE THE HON'BLE HIGH COURT OF MATIL DANU, IN THE MATTER OF GREEN CANVAS v. STATE OF MATIL DANU, UNDER ARTICLE 226<sup>1</sup> OF THE CONSTITUTION OF HINDIA. THE RESPONDENT RESERVES THE RIGHT TO CHALLENGE THE SAME.**

**THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS.**

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<sup>1</sup> Power of High Courts to issue certain writs

- (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibitions*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose
- (2) The power conferred by clause ( 1 ) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause ( 1 ), without
  - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
  - (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated.
- (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

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## **STATEMENT OF FACTS**

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For the sake of brevity and convenience of the Hon'ble Court the facts of the present case are summarised as follows:

1. Hindia is a South Asian country, having second largest population in the world. Due to globalisation, there is a rapid development in the Hindia specifically in its southern coastal State of Matil Danu. Due to unchecked increase in sand quarrying mining, The High Court of Matil Danu, directed the State Government to constitute a Committee of Experts to study the river and river beds in the State with particular reference to the damage caused on account of indiscriminate sand quarrying operations. The Government inserted Rule 38A of the Matil Danu Minor Mineral Concession Rules, on basis of recommendation of committee whereby all existing leases for quarrying sand ceased to be effective and right to quarry sand vested only with the Government.
2. In the year 2010, various writ petitions were filed in The High Court of Matil Danu 2010 batch of cases, with regard to indiscriminate sand quarrying operations in the river swachjal. The Division Bench of The High Court of Matil Danu, modifying its earlier order permitted two poclains to be used, during restricted timings. Thereafter, various writ petitions were filed, to forbear the respondent from carrying on sand quarrying operations alongside the stretches of the rivers of Swachjal. The Division Bench The High Court of Matil Danu disposed of the said writ petitions by order stating permission for fresh sand quarrying operations in the river Swachjal could be granted only after getting environmental clearance from the State Environment Impact Assessment Authority [SEIAA] and the Office Memorandum of the Ministry of Environment and Forest [MoEF]. The Bench directed some of the existing quarries to be either stopped forever or to be started after getting environmental clearance.
3. Finding no response from the MoEF, the SEIAA granted environmental clearances on 30.11.2012, on the basis of the guidelines framed by it. These clearances by the SEIAA to the Executive Engineer of the Public Works Department of the Government of Matil Danu were challenged by various Farmers' Associations and Environmentalists by way of various appeals under Section 16 of the National Green Tribunal Act, 2010. The National Green Tribunal disposed of all the appeals holding that in view of the guidelines issued by the MoEF, the guidelines issued by the SEIAA and the environmental clearances

granted on the basis of those guidelines actually lapsed. However, considering the economic and social needs and public interest at large, the National Green Tribunal allowed the State Government to continue quarrying operations for a period of six months on the basis of the environmental clearances granted by the SEIAA. In the meantime, the Public Works Department was directed by the Tribunal to make fresh applications to the MoEF as per the guidelines dated 24.12.2013 and obtain clearances in accordance with law.

4. Aggrieved by the order dated 24.2.2014 of The National Green Tribunal, the group of environmentalist known as 'Green Canvas' filed a petition under Article 226 of the Constitution of India for the issuance of an appropriate writ to call for a record pertaining to impugned order passed by the National Green Tribunal and to quash the same.

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**ISSUES RAISED**

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The following questions are presented for adjudication in the instant matter:

- 1. WHETHER THE PUBLIC INTEREST LITIGATION FILED BY GREEN CANVAS UNDER ARTICLE 226 OF THE CONSTITUTION OF HINDIA IS MAINTAINABLE.**
  
- 2. WHETHER ALTERNATIVE REMDIES BAR THE JURISDICTION OF HIGH COURT.**

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## **SUMMARY OF ARGUMENTS**

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### **1. THE PUBLIC INTEREST LITIGATION FILED BY GREEN CANVAS UNDER ARTICLE 226 OF THE CONSTITUTION OF HINDIA IS NOT MAINTAINABLE.**

A group of environmentalists known as 'Green Canvas' filed a petition under Article 226 of the Constitution of India for the issuance of writ of *certiorari* to call for the record pertaining to impugned order passed by the NGT dated 24.02.2014 and quash the same. The present PIL is not maintainable as the NGT has neither exercised excessive jurisdiction nor is there any error apparent on the face of the record. The order of the NGT allowing the PWD to continue quarrying operations for a period of six months on the basis of environmental clearances granted by SEIAA and guidelines framed by them is in public interest and socio-economic welfare. Moreover, the tribunal has exercised valid jurisdiction under Section 16 of the NGT Act, 2010 which confers the tribunal to hear the appeal against the clearances given by SEIAA. Hence, the present PIL is frivolous, vexatious and deserves to be dismissed.

### **2. THE PETITIONERS SHOULD HAVE EXERCISED ALTERNATIVE REMDIES**

Section 22 of the NGT Act, 2010 provides that any person who is aggrieved by the order of the NGT may file an appeal to the Supreme Court. Where statutory remedies are available or where a statutory tribunal has been set up, a petition under Article 226 is not a proper remedy unless the remedies are ill-suited, to meet the demand of an extraordinary situation, e.g., (i) where the very *vires* of the statute is in question; or (ii) where private or public law wrong are so inextricably mixed up and the prevention of public injury and the vindication of public justice requires that recourse may be had to Article 226; (iii) in cases where the alternative remedy is not effective or adequate. Moreover, Section 19(4)(f) of the NGT Act, 2010 provides that the tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure (CPC), 1908, while trying the suit in respect of reviewing the decision of the tribunal. Hence, in view of alternative remedies of appeal and review, the jurisdiction under Article 226 stands barred.

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## ARGUMENTS ADVANCED

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### **1. THE PUBLIC INTEREST LITIGATION FILED BY GREEN CANVAS UNDER ARTICLE 226 OF THE CONSTITUTION OF HINDIA IS NOT MAINTAINABLE.**

Black's Law Dictionary defines Public Interest as: "*Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national Government.*"<sup>2</sup> The word 'litigation' means a legal action, including all legal proceedings initiated in a Court of law with the purpose of enforcing a right or seeking a remedy.<sup>3</sup>

In *People's Union for Democratic Rights & Others v. Union of India & Others*,<sup>4</sup> the Hon'ble court defined Public Interest Litigation and observed that "Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society."

In case of a *certiorari*, a stranger<sup>5</sup> may be allowed, by the court, at its discretion, to apply for the writ in exceptional circumstances, viz., where the impugned order or decision-

- i) Involves a grave miscarriage of justice;
- ii) Has an adverse impact on public interest.<sup>6</sup>

According to the facts of the present case the tribunal had exercised valid jurisdiction under Section 16 of the NGT Act, 2010 which provides for appeal by any person aggrieved by an order granting environmental clearance. The farmers and the environmentalist were aggrieved by the clearances given by SEIAA and hence they proffered an appeal under section 16 of the NGT Act, 2010.

The relief granted by the NGT is also not beyond its powers as the order allowing the PWD to continue quarrying operations for a period of 6 months on the basis of environmental clearances granted by SEIAA was in public interest at large and after considering the social

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<sup>2</sup> Garner B.A., *Black's Law Dictionary*, (9<sup>th</sup> ed., 2009).

<sup>3</sup> [www.jurisdictionary.com](http://www.jurisdictionary.com), (Last visited on 19<sup>th</sup> October, 2014).

<sup>4</sup> (1982) 3 SCC 235.

<sup>5</sup> Satya Narayana Sinha v. S. Lal, AIR 1973 SC 2720.

<sup>6</sup> Kalyan Singh v. State of UP, AIR 1962 SC 1183.

and economic welfare. If the period of 6 months had not been granted then the activities of sand quarrying by PWD would come to a halt abruptly. Quarrying of river sand is an important economic activity in the country with river sand forming a crucial raw material for infrastructural development and for the construction industries.<sup>7</sup> Moreover, PWD itself being an instrumentality of state and covered under the definition of State under Article 12 of the Constitution is duty bound to perform welfare functions for the benefit of the people without degradation of the environment.

Further, the statement of objects and reasons of the Act<sup>8</sup> *inter alia* provide that the NGT can enforce any legal right relating to environment. In view of the aforesaid the order passed by the NGT does not suffer from the infirmity of excessive jurisdiction or invalid jurisdiction. Hence, the PIL filed by the petitioners is without substance and is an abuse of the process of law.

## **2. THE PETITIONERS SHOULD HAVE EXERCISED ALTERNATIVE REMDIES**

The existence of alternative remedies is a thing taken into consideration in the matter governing writ.<sup>9</sup> Where statutory remedies are available or where a statutory tribunal has been set up, a petition under Article 226 is not a proper remedy unless the remedies are ill-suited, to meet the demand of an extraordinary situation, e.g., (i) where the very *vires* of the statute is in question;<sup>10</sup> or (ii) where private or public law wrong are so inextricably mixed up and the prevention of public injury and the vindication of public justice requires that recourse may be had to Article 226;<sup>11</sup> (iii) in cases where the alternative remedy is not effective or adequate.<sup>12</sup>

In *Union of India v. Verma*,<sup>13</sup> it was held that it is well settled when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of HC to issue a prerogative writ and where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition U/A 226.

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<sup>7</sup> Deepak Kumar & Ors. v. State of Haryana & Ors., AIR 2012 SC 1386.

<sup>8</sup> National Green Tribunal Act, 2010 (No. 19 of 2010).

<sup>9</sup> Rashid Ahmed v. Municipal Board, AIR 1950 SC 163.

<sup>10</sup> H.B. Gandhi v. Gopinath & Sons, 1992 (Supp.-2) SCC 312.

<sup>11</sup> Shyam Kishore v. Municipal Corporation of Delhi, AIR 1992 SC 2279.

<sup>12</sup> Express Newspapers Pvt. Ltd. v. Union of India, AIR 1986 SC 872.

<sup>13</sup> AIR 1957 SC 882.

Article 226 should not be construed so as to replace ordinary remedies by way of suit and application available to litigant under the general law of the land.<sup>14</sup> Moreover, Article 226 should not be an alternative method of redress to the normal process of a decision in an action brought in the usual course established by law.<sup>15</sup> If an aggrieved person<sup>16</sup> has a right of appeal,<sup>17</sup> writ petition will be invariably be rejected<sup>18</sup> or in cases when there is a provision for making reference on the question of law before the High Court<sup>19</sup> or in cases where other efficacious and effective remedies provided under the Act<sup>20</sup> or in cases when a remedy for filling a revision application is there.<sup>21</sup>

Where a statute creates a right or liability and also prescribes a remedy or procedure for the enforcement of that right or liability, resort must be had to that remedy before invoking the extraordinary and prerogative writ jurisdiction of the High Court under Article 226. Hence, where statutory remedies are available or where a statutory tribunal has been set up, a petition under Article 226 is not generally entertained since Article 226 is not intended to circumvent statutory procedures.<sup>22</sup>

The rationale for the exhaustion of alternative remedy has two fold justifications-

- (i) Where Parliament has provided for a statutory appeal procedure, it is not for the court to usurp the functions of the appellate body<sup>23</sup>
- (ii) The public interest dictates judicial review should be exercised speedily and to that end it is necessary to limit the number of cases in which judicial review is used.<sup>24</sup> To these reasons, can be added the additional expertise that appellate bodies possess.<sup>25</sup>

The NGT Act, 2010 provides<sup>26</sup>-

*Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the*

<sup>14</sup> *Re, Kallumattan Thippaswami*, AIR 1952 Mad. 112.

<sup>15</sup> *Mohan Pandey v. Usha Rani Rajgaria*, AIR 1993 SC 1225.

<sup>16</sup> *Gomeshdas v. State of U.P.*, AIR 1952 All 992.

<sup>17</sup> *Sadhana Lodh v. National Insurance Co.*, AIR 2003 SC 1561.

<sup>18</sup> *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, AIR 1983 SC 603.

<sup>19</sup> *All India Lawyers Forum for Civil Liberties v. UOI*, AIR 2001 Del. 380.

<sup>20</sup> *Sri Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy*, AIR 1997 SC 2189.

<sup>21</sup> *State of HP v. Prithvi Chand*, AIR 1996 SC 977.

<sup>22</sup> *Asst. Collector of Central Excise v. Dunlop India Ltd.*, AIR 1985 SC 330.

<sup>23</sup> *R. v. Panel of Takeover and Mergers Exp. Guinness Plc.*, (1989) 2 WLR 863.

<sup>24</sup> *Ibid*

<sup>25</sup> *R. v. Civil Services Appeals Board Exp. Bruae*, (1989) 1 CR 171.

<sup>26</sup> Section 22, National Green Tribunal Act, 2010.

*award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:*

*Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.*

According to the facts of the present case, the petitioners, 'Green Canvas' could have filed an appeal to the Supreme Court even though they were not parties before the tribunal, as the opening words of Section 16 provides that 'Any Person' aggrieved by the order of the NGT may file an appeal to the Supreme Court. Hence, in light of the alternative remedy under the statute the Hon'ble HC should not exercise its discretionary power under Article 226.

The National Green Tribunal Act, 2010 provides for review-

*The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, inter alia, reviewing its decisions.<sup>27</sup>*

A person aggrieved by a decree or order may apply for review of a judgment.<sup>28</sup> The expression 'person aggrieved' denotes an elastic and to some extent, an illusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition.<sup>29</sup> Even if a third party is affected or prejudiced by a judgment or order, he can seek review of such order.<sup>30</sup>

Hence, according to the facts of the present case, the petitioners should have approached the tribunal for review of the judgment instead of approaching the writ jurisdiction of the High Court under Article 226.

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<sup>27</sup> Section 19(4)(f), National Green Tribunal Act, 2010.

<sup>28</sup> Section 114, Order 47 Rule 1, The Code of Civil Procedure, 1908.

<sup>29</sup> Jasbhai Motibhai v. Roshan Kumar, (1976) 1 SCC 671.

<sup>30</sup> Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909.

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**PRAYER**

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*Wherefore, in the light of the facts presented, arguments advanced and authorities cited, the Respondent humbly submit that the Hon'ble High Court of Matil Danu be pleased to adjudge and declare that:*

- 1. The present PIL is not maintainable under Article 226 as the NGT has neither exercised excessive jurisdiction nor is there any error apparent on the face of the record.*
- 2. The PIL should also be dismissed as the petitioner did not exhaust the alternative remedies available to him.*

*And pass any other relief, that this Hon'ble High Court of Matil Danu may deem fit and proper in the interest of justice, equity and good conscience.*

*For this act of kindness, the Respondent shall duty bound forever pray.*

Sd. /-

(Counsel for the Respondent)