

SUPREME COURT OF INDIA

LG, Andaman Nicobar Islands

Vs.

Bare Foot Inns and Leisure Pvt. Ltd.

S.L.P.(Civil)No.12125 of 2010

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya,JJ.)

02.07.2012

ORDER

G.S.Singhvi,J.

1. On 11.5.2012, arguments were heard in the context of letter dated 10.5.2012 sent by the Principal Secretary (Tribal Welfare), Andaman and Nicobar Administration to the Additional Solicitor General and the order was reserved.

2. In the main petition, the petitioners have questioned the judgment of the Division Bench of the Calcutta High Court, Circuit Bench at Port Blair whereby the appeal preferred by them against the order of the learned Single Judge, who quashed notification dated 30.10.2007 issued under Section 3(1) of the Andaman and Nicobar Islands (Protection of Aboriginal Tribes), Regulations, 1956 (for short, 'the 1956 Regulations') declaring an area up to five km. radius around the Jarawa Tribal Reserve as Buffer Zone and prohibiting entry in the Buffer Zone of any person other than a member of an aboriginal tribe was dismissed.

3. Notice in the special leave petition was issued on 8.3.2010 and operation of the judgment impugned therein was stayed. On 3.12.2010, this Court expressed the view that the petitioners have not taken steps to implement the notification and directed their counsel to make a statement on the issue of closure of all commercial and tourist establishments within the Buffer Zone. Thereafter, several interim orders were passed by the Court for ensuring faithful compliance of the prohibition contained in the notification issued under Section 3(1) of the 1956 Regulations.

4. On 3.2.2012, the Court appointed S/Shri T.S.Doabia, Senior Advocate and Sanjay Upadhyay, Advocate, whose names were suggested by the counsel for the parties, as Court Commissioners with the direction that they shall visit the Island mentioned in the notification and submit report. In compliance of the directions given by the Court, the two Commissioners visited the Island and submitted their separate reports. On 23.4.2012, the

Court noted the submission made by learned counsel for the respondent that the Commissioners had not focused on the issue mentioned in order dated 4.11.2011 and directed the counsel for the petitioners to seek comprehensive instructions on the question of stopping commercial and tourism related activities within the Reserved Area and the Buffer Zone. In compliance of the aforementioned direction, the learned Additional Solicitor General produced letter dated 10.5.2012, the relevant portions of which are extracted below:

“This is in continuation to our letter dated 3/5/2012 referred to above and discussion held today with you, the following brief may kindly be placed before the Hon'ble Supreme Court in the hearing of 11/5/2012 as directed by the Hon'ble Court in its order dated 23/4/2012,

1. No tourist establishment such as resorts, hotels, restaurants, bars and paying guest accommodations except the government run Guest Houses will be permitted within the Buffer Zone.

2. No commercial establishment/activities which may employ more than 20 persons or have annual turnover of Rs. One Crore or more will be allowed in the Buffer Zone.

3. Visits of tourists during day time to Lime Stone Cave and Mud Volcanoes existing in Baratang Island in the Buffer Zone may be allowed to be continued. Yours faithfully, (Ajai Saxena) Principal Secretary (Tribal Welfare)”

5. Learned counsel for the parties made their submissions mainly on the issue of continuance of commercial and tourism related activities within the Reserved Area and the Buffer Zone. While Ms. Indira Jaising, learned Additional Solicitor General submitted that till a decision is taken by the competent authority on the issue of allowing commercial and tourism related activities within the Buffer Zone, the Court may permit the activities specified in paragraphs 2 and 3 of the letter of the Principal Secretary, Shri S. Ganesh vehemently opposed the continuance of any such activity in the Reserved Area and the Buffer Zone by pointing out that the prohibition contained in Notification dated 30.10.2007 and order dated 6.11.2007 issued by Tehsildar, Ferrargunj is absolute. Shri Ganesh submitted that after forced closure of the respondent's resort, the petitioners can neither undertake nor allow any commercial or tourism related activity in contravention of Notification dated 30.10.2007. We have considered the respective submissions. Notification dated 30.10.2007 which was challenged before the High Court and which is under consideration in the special leave petition reads as under:

“Extraordinary Published By Authority No. 243, Port Blair, Tuesday, October 30, 2007 Andaman Nicobar Administration Directorate Of Tribal Welfare Notification:

Port Blair, dated the 30th October, 2007 No. 234/2007/F.No. 1-752/2007-TW - In exercise of the power conferred by Sub-Section (1) of Section 3 of the Andaman and Nicobar Islands (Protection of Aboriginal Tribes), Regulation, 1956 (Regulation No. 3 of 1956), the Lt. Governor, A N Islands, is pleased to declare the area up to five km. radius around the Jarawa Tribal Reserve notified vide No. 159/2004/F.No. 1-752/2002-TW (PF) dated 15th September, 2004 from the Boundary Line starting from Constance Bay in South Andaman to Lewis Inlet Bay in Middle Andaman, as a Buffer Zone. Any/person other than a member of an aboriginal tribe is prohibited from entering the Buffer Zone for any commercial and/or tourism activities.”

6. In our view, the prohibition contained in the above reproduced notification and order dated 6.11.2007 passed by Tehsildar, Ferrargunj is unconditional. Therefore, till the notification is rescinded or amended, no commercial or tourism related activity can be allowed within the Reserved Area or the Buffer Zone and it is not possible for the Court to approve the suggestions contained in paragraphs 2 and 3 of letter dated 10.5.2012 sent by the Principal Secretary (Tribal Welfare), Andaman and Nicobar Administration. We, therefore, direct that henceforth no commercial and tourism related activities shall be carried out by the administration or any private individual in violation of the prohibition contained in notification dated 30.10.2007 and order dated 6.11.2007. It shall be the duty of the Principal Secretary (Tribal Welfare) and other officers of the Administration of Andaman and Nicobar to ensure total compliance of the prohibition contained in notification dated 30.10.2007 and this order. Any breach of this order will entail punishment under the Contempt of Courts Act, 1971.