

SUPREME COURT OF INDIA

T.N. Godavarman Thirumulpad

Vs.

Union of India & Ors.

WP.Civil)No.202/1995

(Jagdish Singh Khehar and C.Nagappan,JJ.,)

08.09.2016

ORDER

1. This Court, while dealing with a number of interlocutory applications filed by different parties including ABG Cement Limited (the applicant herein), passed the following order on 7.5.2010:

"Heard

There are large number of applications seeking permission for mining operations in the State of Gujarat. An objection was raised on the ground that those mining sites are very close to the 'Narayan Sarovar Chinkara Sanctuary'. We had earlier passed orders that there shall not be any mining operations within the prescribed limits.

Learned counsel appearing for the applicants submits that there are several mining sites within a short radius of the 'Narayan Sarovar Chinkara Sanctuary' and any mining at those sites must be prohibited. Signatur Digitally signed by PARVEEN
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"ISr Reason: -J

Having regard to these facts, we direct that there shall not be any mining operations within the radius of 3 kilometers from the outer boundary of the 'Narayan Sarovar Chinkara Sanctuary. The State Government shall ensure that these directions are strictly implemented. In case of any violation, the State will be at liberty to cancel the mining licence of the violator(s)."

2. It would be pertinent to mention, that the above order came to be passed with reference to 'Narayan Sarovar Chinkara Sanctuary'. Based on the afore-stated directions, the Central Empowered Committee (hereinafter referred to as the 'CEC') submitted its report dated 23.06.2010. A two Judge Division Bench of this Court, by an order dated 22.07.2011, approved the findings recorded in the report dated 23.06.2010. It would however be pertinent

to mention, that some of the conditions, more particularly, condition no.2 recommended to be imposed by the CEC, was contested by the applicant herein, namely, ABG Cement Limited. The instant legal/factual position is apparent from the order passed by this Court on 22.07.2011, which is extracted hereunder:

"Item No. 302

The State of Gujarat has filed an application before the Central Empowered Committee ("CEC") seeking permission to delete 2105.42.41 hectares forest area in 57 villages in four districts of Gujarat State under Section 4 of the Indian Forest Act, 1927 (hereinafter referred to as 'the Act'). Details of which are furnished along with the application. CEC placed that application with a report before this Court seeking appropriate orders on the request made by the State of Gujarat. CEC in its report dated 23.6.2010 endorsed the deletion of the areas approved by the Forest Settlement Officer after acknowledging the rights of the villagers in response to the areas notified under Section 4 of the Act. Further it was also reported that the areas have by and large being decided to be excluded on genuine grounds as mentioned in the above mentioned Act. C.E.C., however, imposed following conditions. allotment done after the issue of notifications under Section 4 of the Indian Forest Act;

2. None of the deleted area will be allowed to be used for mining without obtaining approval under the Forest (Conservation) Act, 1980;"
3. for deletion of the area approval under the Forest (Conservation) Act, 1980 will be obtained. However, no NPV or compensatory afforestation charges will be payable as the areas are to be deleted for settlement of rights as per the provisions of the Indian Forest Act, 1927 and
4. the balance areas will be notified as Reserved Forest under section 20 of the Indian Forest Act, 1980. stated herein before , ABG Cement Limited has ' ! W WW* WWW **W- W- ** approached this Court seeking intervention and stated that its rights are effected by condition no.2 suggested in CEC report. Mr. Andhyarujina, learned senior counsel appearing for the intervenor submitted that ABG Cement Limited had made an application before the Government of Gujarat for the grant of the mining lease in certain tracts of barren land aggregating 730.60 hectares of land in Village Nani Ber for limestone mining. Further it is stated that after the order passed by the Forest Settlement Officer, the State of Gujarat has granted approval to the ABG Cement Limited for limestone mining of 730.60 hectares of land in village Nani Ber and by letter dated 30.6.207 called upon the ABG Cement Limited to make the payment of Rs.32,94,500 towards the prospecting charges.
5. Learned senior counsel has further submitted that once the land is deleted on the proposed forest under Section 4 following the procedure under Section 11 of the Act, such land seized to be forest land and therefore provisions of Section 2 of the Forest (Conservation) Act, 1980 do not apply and there is no requirement of obtaining prior approval of the Central

Government under that Act. Learned senior counsel has submitted that C.E.C. has wrongly relied upon the Ministry of Environment and Forests (MOEF) guidelines, which was annexed as Annexure R-4 and stated that these guidelines do not refer to lease which are deleted under the Notification under Section 4 of the Act. Reference was also made in the judgment of this Court in Union of India vs. Abdul Jalil, 1954 4 SCR 158.

6. Mr. P.S. Narasimha, learned amicus curiae and the learned counsel appearing for the State of Gujarat submitted it is unnecessary to examine those contentions at this stage and the application preferred for intervention itself is premature. Further in the reply affidavit filed by the State of Gujarat it is stated that no lease has formerly been granted to the ABG Cement Limited in any of the areas notified under Section 4 of the Act and certain proposal regarding deletion of the lease submitted by the Government of India is pending consideration before the Ministry of Environment and Forests (MOEF). Further, it was also pointed out that ABG Cement Limited had also made an application for seeking approval under the Forest (Conservation) Act, 1980 before the concerned Ministry.

7. We are of the view that, at this stage, it is unnecessary to examine various contentions raised by the learned senior counsel for ABG Cement Limited, since we are only concerned with the question whether the application preferred by the State of Gujarat for deletion of forest land be granted or not. CEC report is in favour of the deletion subject to certain conditions. The Ministry of Environment and Forests (MOEF) in its letter dated 7.1.2010 produced as Annexure R-3 before this Court has stated that the application be considered favourably under such circumstances We are of the view that the request made by the State of Gujarat for deletion of the area as shown in its application is justified. We therefore allow the application as prayed for.

8. However, with regard to the condition no.2 imposed by CEC, we express no final opinion specially in view of the stand taken by the State of Gujarat that no lease has formerly been granted to ABG Cement Limited in any of the areas as notified under Section 4 of the Act. ABG Cement Limited therefore would be aggrieved by the condition imposed by CEC, only if the State Government executes a lease deed in its favour or grants permission for mining, which is yet to happen. We therefore leave that question open. Learned senior counsel has further submitted that he would be permitted to move an application before the Ministry of Environment and Forests(MOEF) seeking approval for the grant of lease and also to make a plea before the Ministry of Environment and Forests (MOEF) for permission under the Forest (Conservation) Act, 1980 and also to challenge the condition no.2 ABG Cement Limited, if so advised may raise all those contentions before the Ministry of Environment and Forests (MOEF) and it is for the MOEF to consider with which we express no final opinion. IA No. 2881 of 2009 preferred by the State of Gujarat for deletion stands allowed, as above.

9. IA Nos. 3026-3027 filed by ABG Cement Limited are accordingly disposed of."

(underline is ours)

Insofar as the interlocutory application filed by ABG Cement Limited is concerned, the CEC submitted a separate report dated 1.4.2011. In the instant report, the same four conditions, which were expressed in the original report of the CEC dated 23.06.2010, were sought to be incorporated. It is in the above circumstances, that ABG Cement Limited has again approached this Court, in view of the liberty granted to the applicant by this Court's order dated 22.07.2011, to assail condition no.2.

10. It would be pertinent to mention, that simultaneously with the filing of the instant application, ABG Cement Limited also moved an application on 20.08.2011 under Section 3 of the Forest (Conservation) Act, 1980, for permission/clarification/exemption under the provisions of the Forest (Conservation) Act, 1980 for conducting limestone mining operations on the leased land at Kutch, in the State of Gujarat. On account of the fact, that the Ministry of Environment and Forests has not taken any decision on the application filed by ABG Cement Limited, it has again approached this Court, to require the concerned competent authority to dispose of the application dated 20.08.2011.

11. During the course of hearing of the instant interlocutory application, the case projected by the applicant also was, that the order passed by this Court on 22.07.2011 be clarified, so as to enable the concerned competent authority, to expeditiously dispose of the application filed by ABG Cement Limited, under Section 3 of the Forest (Conservation) Act, 1980.

We would not have, as a matter of routine, accepted the prayer made by the learned counsel for the applicant, as has been noticed in the foregoing paragraphs. However, on examining the complication of the legal issue involved, we were satisfied, that a determinative order needed to be passed for an effective disposal of the application filed by ABG Cement Limited, under Section 3 of the Forest (Conservation) Act, 1980. It is therefore, that we would venture to adjudicate upon the limited issue, which has been projected before us, during the course of hearing. For the aforesaid purpose, it would be necessary to narrate some facts relied upon by the applicant. They are being recorded hereunder.

12. It is not a matter of dispute, that ABG Cement Limited moved an application under the Forest (Conservation) Act, 1980 for conducting limestone mining operations, over land given to it on lease by the State of Gujarat. In this behalf, it would be relevant to mention, that by notification dated 21.8.1984, (issued under Section 4 of the Indian Forest Act, 1927), the Government of Gujarat expressed its intention to declare certain areas of land as reserved forest, in district Kutch, in the State of Gujarat.

13. The land depicted in the Section 4 notification, inter alia, included land over which ABG Cement Limited, had been granted a mining lease. By an award dated 9.11.1995, the Forest Settlement Officer, inter alia, deleted an area of 364.22 hectares, out of the area notified under Section 4, referred to above.

14. Learned counsel for the applicant also highlights, that the State of Gujarat by a letter dated 26.3.1998 gave an in-principle approval in favour of ABG Cement Limited, for carrying on limestone mining, in an area of land measuring 730.60 hectares, falling within

the revenue estate of village Naniber of Abadasa Taluka, in District Kutch, in the State of Gujarat. Consequent upon the receipt of the in-principle approval, ABG Cement Limited paid prospecting charges to the Government of Gujarat. Out of the area of 730.60 hectares of land, in-principle allotted to ABG Cement Limited for limestone mining, an area of 364.22 hectares formed part of a larger area of land (measuring 10935.2611 hectares), notified under Section 4, referred to above.

15. After the deletion of the area of 364.22 hectares expressed in the award of the Forest Settlement Officer dated 9.11.1995, the remaining land is still subject to a declaration through an award as reserved forest. Interlocutory application nos. 1228-1229 were filed by the State of Gujarat before the CEC. The CEC through IA No. 2881 submitted its recommendations to this Court, for the deletion of 364.22 hectares of land (from out of area of 10935.2611 hectares), as the same should be treated as reserved forest.

16. It is necessary to point out, that the CEC recommended the deletion of 10935.2611 hectares of land, out of the purview of the total land measuring 33607.9406 hectares, originally notified under Section 4, and while making the above recommendations, just as in the first report of CEC dated 23.6.2010, it again imposed the same four conditions:

"The CEC recommended the deletion of 10935.2611 hectares of land out of the purview of the total land admeasuring 33607.9406 hectares originally notified under Section 4 of the Indian Forest Act, 1927. However, the CEC made the following recommendations:

(i) no area will be deleted on the ground of its allotment done after the issue of notifications under Section 4 of the Indian Forest Act; and

(ii) none of the deleted area will be allowed to be used for mining without obtaining approval under the Forest (Conservation) Act, 1980; and

(iii).for deletion of the area approval under the Forest (Conservation) Act, 1980 will be obtained. However, no NPV or compensatory afforestation charges will be payable as the areas are to be deleted for settlement of rights as per the provisions of the Indian Forest Act, 1927; and

(iv)the balance areas will be notified as Reserved Forest under section 20 of the Indian Forest Act, 1980."

(underline is ours)

17. Being aggrieved of condition at (ii) above, imposed by the CEC, the applicant - ABG Cement Limited, in whose favour an area of 730.60 hectares (including the aforesaid area of 364.22 hectares of land) had been granted an in-principle approval, for carrying on limestone mining, which included the land deleted/excluded from the purview of the notification issued under

Section 4.

As noticed hereinabove, the afore-stated application nos. 3026-3027 filed by ABG Cement Limited, were disposed of on 22.7.2011, when this Court, while approving the deletion of 10935.2611 hectares out of the purview of Section 4 notification (including the aforesaid area of 364.22 hectares of land), pointedly observed, that condition no.2 imposed by the CEC was tentative, and that ABG Cement Limited - the applicant herein would be at liberty to make an appropriate representation/application to the Ministry of Environment and Forests, for seeking appropriate clarification (order dated 22.7.2011 has already been extracted hereinabove).

18. Pursuant to the liberty granted by this Court to the applicant - ABG Cement Limited, the applicant filed an application seeking the approval of the Ministry of Environment and Forests, for the grant of a mining lease, over the area which had already been permitted, subject to the deletion of the area from the purview of Section 4 notification. That the applicant made the following requests to the Ministry of Environment and Forests, in its application filed under Section 3 of the Forest (Conservation) Act, 1980:

"15. In view of the order dated 22.7.2011 passed by the Hon' ble Supreme Court of India and, by way of abundant caution, we would request you to kindly give your approval and clarify that the provisions of Forest (Conservation) Act, 1980 would not apply to the said land admeasuring 364.22 hectares, which has ceased to be Forest Land."

Insofar as the aforesaid prayer is concerned, it was sought to be clarified to us, during the course of hearing, that the same was based on an earlier order passed by this Court dated 8.2.1989 in Banwasi Seva Ashram vs. State of Uttar Pradesh, wherein this Court, inter alia, mandated as under:

"We are of the view that the lands which are subjected to the Notification under Section 4 of the Forest Act would also come within the purview of Section 2 of the Forest (Conservation) Act, 1980 and it would, therefore, be necessary for the N.T.P.C. to obtain appropriate clearance under that Act from the appropriate authority."

19. We are of the view, that the aforesaid order was with reference to the transitory period, namely, from the date of the issuance of the notification under Section 4 of the Forest Act, till the culmination of the process of declaration under Section 20 of the Forest Act. We are of the view, that the afore-stated direction was inevitable, in view of the fact, that in case an individual was desirous of using forest land for non-forest purposes, permission under Section 2 of the Forest (Conservation) Act, 1980 was imperative, and it is therefore, that even during the transitory period, it would be open to the Ministry of Environment and Forests, to approve a request for use of forest area for non-forest purposes, under Section 2 afore-mentioned.

20. During the course of hearing, it was the contention of the learned counsel for the applicant, that use of reserved forest land and/or forest land for non-forest purposes needs the prior approval in terms of section 2 of the Forest (Conservation) Act, which is extracted hereunder:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose - Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation. Explanation-For the purposes 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, horticulture crops or medicinal plants;

(b) any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, 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."

21. It was however pointed out, that in a given situation, as in the present case, where the government land is sought to be declared as reserved forest, but some of the land originally mentioned in the Section 4 notification, is deleted, then clearance under Section 2 of the Forest (Conservation) Act, 1980 would be a requisite condition, for use of the said land for non-forest purposes, only and only, if the deleted land is forest area and not otherwise.

22. It was the contention of the learned counsel for the applicant - ABG Cement Limited, that the area of 364.22 hectares, which was sought to be deleted from the area notified under Section 4 of the Indian Forest Act, did not actually remain forest land, and as such, did not

require clearance mandated under Section 2 of the Forest (Conservation) Act, 1980. To support his afore-stated contention, learned counsel for the applicant has placed reliance on the award of the Forest Settlement Officer dated 9.11.1995 (with reference to Case No. 1/1995-96), which expressly pertains to the area of 364.22 hectares of village Naniber of Abadasa Taluka in district Kutch, in the State of Gujarat. A relevant extract from the order passed by the Forest Settlement Officer dated 9.11.1995 reveals, that based on the enquiry conducted by the Forest Settlement Officer, there was a village settlement in the area.

"5.Decision and Points After taking into consideration the replies of the leader of Local Group Gram Panchayat, Moti Ber, Group Gram Panchayat' s Sarpanch, Nani Ber, Village people and the leaders, Talati of Moti Ber Group Gram Panchayat- who also hold charge of Talati of Nani Ber village, the Deputy Forest Conservator, Kutch western Forest Division' s Representatives, Range Forest Officer, Normal Range, Naliya etc., I am required to decide the following points:-

Points

1. Whether the area being Firing Survey No.79,80, 82 to 86, 94(part) 96 to 107, 113 to 119 of village Nani Ber of Abdasa taluka would Remain as ' reserved forest' or not? No.
2. Is there any public or private right & interest involved in the above Firing Survey Numbers? Yes,in great proportion
3. What should be the final order? As stated in Point No.7

xxx xxx xxx xxx xxx

7.ORDER

While thinking in broad sense in respect of the above facts and after getting the replies, submissions, representations of all concerned, and on taking into account the ' certificate' of the Geologist and in accordance with the authority vested in me vide Section 11,12,15 & 16 of the Indian Forests Act, 1927, it is hereby ordered and resolved that the entire area of village ' Nani Ber' of Abdasa Taluka admeasuring Hectares 364.22 Are (Acre 900-00 gutha) in relation to Firing survey No. 79, 80, 82, 83, 84, 85, 86, 94(part) 97, 98, 99,100, 101, 102, 103, 104 ,105, 106, 107, 113, 114, 115, 116, 117, 118 & 119 will not be kept as ' reserved forest' and hence, the question relating to the facts of common people does not arise at all, and hence the Schedule ' A' will be treated as NIL."

(underline is ours)

23. On a consideration of the order of the Forest Settlement Officer extracted above, the Forest and Environment Department of the State of Gujarat has on 23.08.2016 ordered as under:

"In view of above, consequent to due process of settlement and proceedings therein, as provided in IFA 1927 and forest settlement report, due to reasons recorded therein, entire area of 364.22 ha, declared u/s 4, not being recommended to be declared as forest u/s 20, has been deleted, from section 4 thereby leaving no area to be declared u/s 20. Hence no procedure for declaring the area u/s 20 was required.

In view of the above situation, state hereby declares that consequent to completion of legal process of forest settlement and right examination, appellate procedure, and the process provided in IFA 1927, from section (4) to (20) and acceptance of Forest Settlement report, entire area of 364.22 ha. Of survey numbers 79, 80, 82, 83, 84, 85, 86, 94 part, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 113, 114, 115, 116, 117, 118, 119 of Nanibar village of Kutch district - initially declared u/s 4 not being recommended to be fit for declaring u/s 20, owing to the reasons, recorded in the forest settlement report - has been deleted, from section 4 and there being no area left for declaring u/s 20, the notification for section 20 is not required and entire procedure for declaring the forest may be deemed to have been completed and area of 364.22 ha. Of survey numbers 79, 80, 82, 83, 84, 85, 86, 94 part, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 113, 114, 115, 116, 117, 118, 119 of Nanibar village of Kutch district, declared u/s 4, is reverted back to its original status of revenue land."

24. In view of the above, the release of area measuring 364. 22 hectares, which is the subject matter of consideration, is clear. It is not necessary for us to dwell into the instant aspect of the matter any further. All that needs to be recorded is, that under Section 3 of the Indian Forest Act, 1927, the kinds of land which can be declared as reserved forest has been expressly delineated therein. Section 3 afore-mentioned is reproduced below:

"3. Power to reserve forests - The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest in the manner hereinafter provided."

(underline is ours)

25. It is out of the above lands, that the State Government can notify a reserved forest area, under Section 4 of the Indian Forest Act, 1927. The same is also reproduced below:

"4. Notification by State Government - (1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette –

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called "the Forest Settlement Officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation - For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (1) shall ordinarily be a person not holding any forest-office except that of Forest Settlement Officer.

(3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement Officer under this Act."

26. It is apparent from a collective reading of Sections 3 and 4 of the Indian Forest Act, extracted hereinabove, that in case of a deletion of an area, which was proposed to be declared as a reserved forest, the area so deleted will revert to the original nomenclature of the said area, i.e., the nomenclature which the land had, prior to the issuance of the notification under Section 4 of the India Forest Act.

27. Out of the kinds of land expressed in section 3, it is apparent, that if the land notified under Section 4 was not forest land but waste land, or some other kind of land over which Government has proprietary rights, on the deletion of the area notified under Section 4, such land would stand restored to its original nomenclature as forest land and/or alternatively such type of land, such as waste land, over which the Government has proprietary rights. In the afore-mentioned latter category of land, no clearance contemplated under Section 2 of the Forest (Conservation) Act, 1980, can be insisted on. It is only with reference to reserved forest land, or land which is notified for being declared as reserved forest, or forest land, that a clearance is contemplated under Section 2 of the Forest (Conservation) Act, 1980.

28. In view of the above, we direct that in the application filed by the applicant - ABG Cement Limited, the concerned competent authority shall, in the first instance, determine the nomenclature of the land deleted from the notification issued under Section 4 of the Indian Forest Act, 1927, prior to the notification. If it emerges, that the relevant land is forest land, then and then alone, the concerned competent authority will further determine, whether permission should be granted to the applicant to carry on non-forest operations, namely, mining operations for conducting limestone mining. If the released land was originally not

forest land, no forest clearance would be required. The instant application stands disposed of in the above terms.

29. The concerned competent authority is directed to take a final decision on the application dated 20.08.2011 filed by the applicant herein - ABG Cement Limited under Section 3 of the Forest (Conservation) Act, 1980, within two months from the date of passing of this order.