

SUPREME COURT OF INDIA

Chandra Prakash Budakoti

Vs.

Union of India

C.A.No.4452 of 2019

(L.Nageswara Rao and Hemant Gupta,JJ.,)

24.10.2019

JUDGMENT

L.Nageswara Rao,J.,

1. This appeal is directed against the judgment dated 05.04.2019 passed by the National Green Tribunal, Principal Bench, New Delhi (hereinafter, 'the Tribunal') in Original Application No.626 of 2016.

2. The Appellant who is a Journalist and Editor of Jan Lok Kesari which is a Hindi Newspaper having circulation in Uttarakhand, filed the application in public interest as he was concerned about the environmental damage caused by Respondent No.4 to 8. He alleged in the O.A. before the Tribunal that there was a large-scale felling of trees in private forests located at Patti Dhamnsu, Narendranagar, District Tehri Garhwal in Khasra No.512 and 514. The Appellant also complained of blasting activities being resorted to by Respondent No.4 to 8 in the fragile Himalayan region. The Appellant averred in the O.A. that no action was taken by the District authorities to whom he complained about the violation of the Forest (Conservation) Act, 1980 (hereinafter, 'the Act'). He also referred to Khasra No.605 in which there were fully grown trees which were being felled. On the basis of the above allegations, the Appellant sought a direction to the State of Uttarakhand and the Principal Chief Conservator of Forests, Uttarakhand to stop the tree felling and usage of forest land for non-forest purposes in Khasra No.512, 514 and 605 in Narendranagar District, Tehri Garwal. He further sought a direction to Respondent No.4 to 8 therein to stop construction. Later, the Appellant impleaded Respondents 7 to 9 in the O.A. The Tribunal on an application dated 11.04.2017 directed an inspection to be done by the Forest Survey of India. The said inspection was done on 01.05.2017 and a report was filed in the Tribunal which showed progressive degradation of forest cover in Khasra No.605.

3. The State of Uttarakhand filed a counter affidavit before the Tribunal in which it was stated that a Hotel/Villa is being constructed by the Mahananda Spa and Resorts Private Limited, since 2010-2011 in Khasra No.512, 513 and 605. According to the State

Government, the land falling in Khasra No.512, 513 and 605 is neither a reserved forest nor a forest in the record of the Forest Department. It was further stated in the said counter affidavit that Khasra No.512 and 513 were recorded as private forests in the revenue record and Khasra No.605 as barren (banjar) land. The State Government further submitted that the project proponent was directed to stop construction in view of the complaints made by the residents of Kumar Khera and Daur to Sub-District Collector, Narendranagar. As certain trees were found to be damaged during the construction, a fine was imposed under Section 4/10 of the U.P. Protection of Trees in Rural and Hills Areas Act, 1976.

4. By an order dated 19.12.2018, the Tribunal directed the Regional office of the Ministry of Environment & Forest at Dehradun to visit the site and submit a status report. A Committee comprising Ms. Komal Preet, Conservator of Forest and Dr. S.C. Katiyar, Scientist E inspected the site on 05.01.2019. During the inspection, the Range Officer Narendranagar forest division and Kanungo from the office of Sub Divisional Magistrate, Narendranagar were also present. The said inspection report dated 17.01.2019 filed before the Tribunal in which the following observations were made:

Observation during site visit:

1. Status of Khasra No.512, 513 and 605 in revenue records and as per site inspection:

No.	Khasra No.	Ownership as per revenue records	Status of construction	Vegetation cover
01	512	Private land	Villas constructed	Sparse
02	513	Private land	Villas constructed	Sparse
03	605	Private and	Partly under villas already constructed and partly under Westin Resort under construction	Sparse

2.As per the revenue records, the ownership of Khasra No.512, 513 and 605 are 'nap' or private land.

3. The revenue records have not been updated since 1938 and the status of land for khasra no.512 and 513 is 'niji van' or private forest while for khasra no.605 is 'banjar' or barren.

4. The land was not considered as deemed forest by the forest department in report filed in the Godavarman case.

5. At present, khasra no.512 and 513 and part of 605 are having independent villas which are devoid of any natural vegetation.

6. Owner of the project denied having any rights in khasra No.514.

7. On a portion of khasra no. 605, resort in the name of Westin Resort is being constructed. During the site visit the construction was seen going on at the resort.

8. There is no evidence of blasting and representatives of both the revenue and forest department denied the same. It was also informed that the land is devoid of hard rocks and

hence blasting is not required for any construction activity.

9. The construction site adjoins civil land at its back side which was seen having natural vegetation akin to miscellaneous degraded forest having mostly shrubs and few trees.

10. There was no sign of any fresh tree felling at the site. As per the forest department, illegal felling was reported and booked under U.P. Tree Protection in Rural and Hilly Areas Act, 1976 of the state during the year 2011-12 for 34 no. of trees and year 2015-16 for 16 no. of trees (annexure ii).

11. The land is already broken and construction going-on over major part of the khasra 605 and adjoining land also bears only degraded forest land with miscellaneous species, and has also not been marked as deemed forest by the forest department, hence in its present state it does not qualify as deemed forest on the basis of the vegetation on khasra no.605.

12. Since khasra no.605 was recorded as 'banjar' or barren in the year 1938 in revenue records, which have not been updated, hence continue to be reflected as banjar. As per the directions of the Hon'ble Supreme Court in the matter of T.N. Godavarman, Forest Conservation Act, 1980 would be applicable to all such lands recorded as forest in revenue records irrespective of the ownership, hence land under khasra no.605 would not attract Forest (Conservation) Act, 1980. (Annexure II)

13. Khasra no.512 and 513 have been recorded as private forest in the revenue records, hence would attract the provisions of Forest (Conservation) Act, 1980 over which construction has already been completed in the form of villas. (Annexure II).

5. After a careful consideration of the report, the Tribunal passed the following order: -

(i) We hold that Khasra No. 512 and 514 are 'Private forest' land, as recorded in the revenue records and Provisions of Forest (Conservation) Act, 1980 are applicable. We, therefore, direct the Forest Department and MoEF to initiate proceedings for violation of Forest (Conservation) Act, 1980 in Khasra No. 512 & 513 for non-forestry activities by way of raising constructions, if such constructions had been undertaken without obtaining prior approval of MoEF. It has been stated that there are independent villas in Khasra No. 512 & 513. We also direct the Forest Department to conduct enquiry to find out the persons/officials responsible for the violation, if any and to proceed against them in accordance with law. (ii) The observations of FSI with regard to Khasra No. 605 are not conclusive and cannot be relied upon. The area of Khasra No. 605 in the report submitted by FSI is given as 11 18.02 ha whereas as per Revenue record it is 10.394 ha. We cannot arrive at any conclusion as to which part of the Khasra No. 605 had been degraded as the area of Khasra No. as given in FSI report is significantly more than the area recorded in the revenue records, in the absence of any report on deemed forest filed by the Forest Department, we would go by the site inspection report of the Regional office which is based on the revenue records and the existing character of the land. We, therefore, accept the observations given in the site inspection report of the Regional Office of the MoEF

wherein it has been stated that Khasra No. 605 is non-forest land and Provisions of Forest (Conservation) Act, 1980 will not be applicable.

6. Aggrieved by the judgment of the Tribunal, the Appellant has approached this Court by filing the above appeal.

7. Before we proceed further it is relevant to mention that the direction issued by the Tribunal in respect of Khasra No.512 and 514 has not been challenged by the Respondents. The grievance of the Appellant in respect of Khasra No.512 and 514 is that the authorities have not implemented the directions.

8. The main controversy in the above appeal pertains to Khasra No.605. Mr. P.S. Patwalia learned Senior Counsel appearing for the Appellant submitted that Khasra No.605 is a deemed forest and would fall within the expression of forest, attracting the provisions of the Forest (Conservation) Act. He relied upon a judgment in T.N. Godavarman Thirumulpad v. Union of India to submit that the words 'forest' should be understood according to its dictionary meaning. He relied upon Google images from 2007 to 2014 which would show that the area which was densely populated with trees has gradually undergone a change.

9. He submitted that Oak and Kukat trees were cut and construction was commenced by Respondent No.9 i.e. Mahananda Spa and Resorts Pvt. Ltd. without obtaining clearance under the Forest (Conservation) Act. He referred to the reports submitted by the Forest Survey of India and the joint inspection report of the forest authorities in support of his submission that there has been a progressive reduction in the forest area in Khasra No.605. He also placed reliance on the judgements of this Court in M.C. Mehta (Kant Enclave matters) v. Union of India and Kerala State Coastal Zone Management Authority v. State of Kerala to argue that any construction carried out without requisite permissions is liable to be demolished.

10. Mr. C. A. Sundaram, learned Senior Counsel appearing for Respondent No.9 submitted that the land of Respondent No.9 in Khasra No.605/1 is recorded as barren (banjar) land in the revenue records. He referred to the revenue records to contend that the land in Khasra No.605 is neither a forest land nor in the nature of a forest. Initially, according to him, Mahananda Spa and Resorts Limited was to be constructed in 5702.20 sq. meters for which a sanctioned building plan was granted. According to the notification dated 14.09.2006, environment clearance is required only if the built-up area of a project is more than 20,000 sq. meters. As it was decided to increase the built-up area from 13983.67 sq. meters to 32,791 sq. meter, a fresh building plan was submitted for approval. Mr. Sundaram contended that the entire shareholding of the erstwhile promoters of the Respondent No.9 was sold to Mankind Pharmaceuticals Limited company. Thereafter, Respondent No.9 applied for grant of environment clearance on 01.02.2016 and Consent to Establish from the Uttarakhand Environment Protection and Pollution Control Board.

11. Mr. Sundaram stated that the State Level Environment Impact Assessment Authority

conducted a site inspection on 21.02.2016 pursuant to which the environment clearance was granted on 03.03.2016 permitting construction of the total built-up area of 32,686 sq. meters. He contended that there was no felling of any trees, as alleged by the Appellant. The submission of Mr. Sundaram that the construction taken up by Respondent No.9 was after obtaining all the necessary sanctions and approvals which were not subject matter of challenge in any forum.

12. The Appellant placed heavy reliance on the report of the Forest Survey of India which conducted an inspection on 01.05.2017. It is no doubt true that it was mentioned in the report that there is a gradual degradation of forest in Khasra No.605. The Committee proceeded with the inspection on the basis that Khasra No.605 is a forest on the ground that all lands with the tree canopy density between 10 % to 40 % shall be treated as open forest. The Committee made no reference to the revenue records. The Committee further proceeded on the ground that the total area of Khasra No.605 is 18.02 hectares to conclude that there is a progressive degradation due to construction of golf courts and other buildings in the area. The Tribunal rightly refused to accept the report of the Forest Survey of India as according to the revenue records, the land in Khasra No.605 is only 10.39 hectares. The Tribunal observed that it is difficult to arrive at a conclusion as to which part of Khasra No.605 has been degraded as the report of FSI refers to Khasra No.605 to be more than the area recorded in the revenue records.

13. The Appellant filed M.A. No.1672 of 2018 in O.A. 626 of 2016 seeking a direction for a site inspection in view of fact that Respondent No.9 is continuing with the construction in the forest area. By an order dated 19.12.2018, the Tribunal directed the Regional office of Ministry of Environment and Forest, Climate Change, Dehradun to conduct an inspection. After conducting an inspection, a report was submitted on 07.01.2019. The clear findings recorded in the report are that the revenue records show that Khasra No.605 is banjar or barren land. In NOIDA Memorial Complex Near Okhla Bird Sanctuary, In Re v. , this Court held that due weight has to be given to revenue records, especially those pertaining to a period when the dispute regarding the land being a forest land did not exist. In the instant case, the revenue records relied upon by the Respondent No.9 are very old when nobody could have imagined about the project.

14. The observation in the report dated 07.01.2019 is to the effect that the land in Khasra No.605 was not considered as a deemed forest by the Forest Department in the report filed in Godavarman's case. There is no evidence of blasting operations. There is also no sign of any fresh felling of trees and finally it was concluded that the land in Khasra No.605 cannot qualify as deemed forest. There is a reference in the report to the judgment of this Court in Godavarman's case wherein it was held that the Forest Conservation Act would be applicable to all lands recorded as forest in the revenue records. The provisions of the Forest Conservation Act are not applicable to Khasra No.605. We are in agreement with the findings recorded by the Tribunal that the land falling in Khasra No.605 is banjar or barren land and the provisions of the Forest Conservation Act is not applicable.

15. In so far as Khasra No.512 and 514 are concerned, the Forest Department, State of Uttarakhand, Ministry of Environment and Forest have been remiss in not initiating the proceedings as directed by the Tribunal. The inquiry as directed by the Tribunal shall be completed within a period of three months from today and further action be taken immediately thereafter.

16. For the aforementioned reasons, we uphold the judgment of the Tribunal and dismiss the appeal.