

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Review Application No. 29/2016

In

O.A. No. 38/2011

And

**Execution Application No. 43/2017 in
M.A. No. 787/2015 & M.A. No. 1006/2015**

In

O.A. No. 38/2011

IN THE MATTER OF :-

Numaligarh Refinery Ltd. Vs. Rohit Choudhary & Ors.

And

Rohit Choudhary Vs. Union of India & Ors.

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Review Application No. 29 of 2016

**Present: Review Applicant: Mr. A.D.N. Rao, Adv.
Respondent no. 1: Mr. Ritwick Dutta, Mr. Saurabh Sharam and Mr. Utkarsh Jain, Advs.
Mr. Mukul Singh, Adv. for Ministry of Environment, Forest and Climate Change
Mr. Shuvodeep Roy and Mr. Vinayak Gupta, Advs. for State of Assam**

Execution Application No. 43 of 2017

**Present: Applicant: Mr. Ritwick Dutta, Mr. Utkarsh Jain and Ms. Meera Gopal, Advs.
Respondents: Mr. Divya Prakash Pandey, Adv.
Mr. Balendu Shekhar, Mr. Sriansh Prakash and Mr. Rajkumar Maurya, Advs. for Ministry of Environment, Forest and Climate Change
Mr. Shuvodeep Roy and Mr. Vinayak Gupta, Advs. for State of Assam**

Date and Remarks	Orders of the Tribunal
Item Nos. 13 & 14 August 03, 2018 R	<p>1. This Tribunal vide the order dated 24.08.2016, dealt with the allegation that the Township extension area of Numaligarh Refinery Limited covered a part of elephant corridor which interfered with the environment. Following facts were noticed:</p> <p><i>“19. From the above mentioned letters of DFO Golaghat dated 21st February 2011 and 27th May, 2015, the video clipping where an elephant has died after hitting against the said wall and the applicant’s affidavit referring to 12 elephants having died due to construction of said wall, it is clear that the ‘NRL’ has constructed the boundary wall in 2011 for the proposed expansion of Phase-3 of their residential complex and the said wall is coming in the way of the elephant corridor.</i></p>

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The said wall is also encroaching upon the Deopahar 'PRF' as well as the 'NDZ'.

20. The barbed wire and razor's edge fencing along the said wall is extremely dangerous to the elephants and other wild life passing through the vicinity. As a result, some elephants have died after the wall came up, as brought out in the video clipping given by Applicant. The elephant corridors have to be preserved to protect their habitats from fragmentation. They are of prime importance for migration of elephants from one habitat to another. We find that the wall and the proposed township are in violation of the 'NDZ' order.

21. As per the guidelines from the National Board for Wildlife, no power fencing can be erected on the elephant corridor. Further, fencing material is to be of certain specification and the source of power should be solar or battery, so that it does not cause life hazard to the elephant and this has to be strictly complied with.

22. Further, to restrict the entry of elephants on the golf course side, a high rise wall had been constructed during Phase-I of the township which draw the boundary between the highly dense Deopahar Forests and the Golf Course. This wall also has barbed wire with razor's edge fencing which is injurious to elephants.

23. It is also evident that the 'NRL' while making the Golf course, has denuded the hill covering about 5 hectares of a large number of tress, without any approval of the Central Government or compensatory afforestation, despite its being in the 'NDZ'. They have flattened the hill and removed the precious top soil to make the golf course, thereby leading to environmental degradation."

2. Accordingly, following direction was issued:

"1. As regards the wall with barbed wire fencing which comes in the way of Elephant Corridor, the same should be demolished. The area, where the wall has come up and the proposed township is to come up is a part of Deopahar 'PRF'. It also falls within the No-Development Zone notification, issued by the 'MoEF' in 1996. Thereby, any non-forest activity thereon would be in violation of the decision of the Apex Court in the T.N. Godavarman case (1996). Thus, the wall should be demolished within a period of one month and the proposed township should not come up in the present location."

3. In the Review Application, it is inter-alia submitted

<p>Item Nos. 13 & 14</p> <p>August 03, 2018</p> <p>R</p>	<p>that project had the clearance of the State Environment Impact Assessment Authority which fact was not taken into account by the Tribunal.</p> <p>4. Notice was issued in the Review Application. The State of Assam has taken the stand that out of 9 hectares of land which was acquired by the State of Assam, only 1 hectare was required and the remaining area could be returned to the Refinery and the wall could be realigned.</p> <p>Affidavit dated 19.03.2017 is as follows:</p> <p><i>“It may be summarized that the Review Petitioner acquired 750 Bighas land and secured it with boundary wall in the year 1996 wherein the old township is existing. In the year 2008, the Review Petitioner acquired additional 67 bigha tea garden land and secured it with boundary wall in the year 2011 wherein the Review Petitioner started construction of residential quarters. Presently, the Review Petitioner has absolute lawful possession over the plot of land measuring total 817 (750+67) bigha. Out of newly acquired 67 bigha (9ha) land (presently under possession of the Review Petitioner), 7 bigha (1ha) land falls in Proposed Deopahar Reserve Forest notified in 1999.</i></p> <p><i>As per original notification for Proposed Deopahar Reserve Forest in 1999 total area was 133.45ha which was subsequently increased to 150.45ha through a joint survey carried out in Feb-Mar, 2012 after the 67 bigha (9ha) land was transferred to the review petitioner through Land Acquisition process in 2008. Except for the said 1ha land out of the total 9ha there is no dispute on the remaining portion of 8 ha land under the possession of the review petitioner. If the review petitioner is willing to relinquish the 1ha land for Proposed Deopahar Reserve Forest by which total area of Deopahar Reserve Forest will be 151.45 ha and thus it will ease out all problems including stray elephant movements also in that area.</i></p> <p><i>In reference to the Review Petitioner’s prayer, the answering Respondent will have no objection if the boundary wall is re-aligned and construction work of the quarters are restarted in the remaining portion of the land (i.e. 60 bigha) as prayed by the Review Petitioner, as per applicable guidelines and directives.</i></p>
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5. Further affidavit has been filed stating as follows:

“That NRL authority has surrendered the said portion of land and the boundary wall, covering 1 hectare land was demarcated and is finally demolished on 13.03.2018. This 1 hectare land has been taken over by Revenue Department from NRL. This will facilitate free animal movements in the area as well as for declaration of Deopahar as Reserve Forest shortly. By taking out of this 1 hectares land from the originally acquired land of 9 hectares, the balance 8 hectare of land, under the possession of NRL, is free from proposed Deopahar Reserve Forest area.”

6. Learned counsel for the review petitioner submits that the entire wall need not be demolished as the same is not the part of Deopahar Reserve Forest.

7. We are of the view that in view of categorical finding already recorded by the Tribunal that the area where the wall came up and the area where proposed township is to come up is a part of Deopahar Reserve Forest, rehearing on merits is not permissible.

8. Accordingly, we do not find any ground for review of order dated 24.08.2016.

The review application is dismissed.

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In view of above, no further order is necessary on this application and the same stands disposed of.

....., CP
(Adarsh Kumar Goel)

....., JM
(Dr. Jawad Rahim)

.....,JM
(S.P. Wangdi)

.....,EM
(Dr. Nagin Nanda)

03.08.2018