

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

Original Application No. 407/2017
(M.A. No. 779/2017 & M.A. No. 795/2017)

Lt. Col. (Retd.) Sarvadaman Singh Oberoi

Applicant(s)

Versus

State of Haryana & Ors.

Respondent(s)

Date of hearing: 05.03.2019

Uploaded on 08.03.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL
MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. The issue for consideration is whether the land, measuring 52.2991 acres, in Village Sarai Khawaja, Faridabad, Haryana, bearing Khasra Nos (73/15, 16,24,25), (74/11, 12, 19, 20, 21, 22), (81/4, 5,6/1, 7, 8, 11, 12, 13, 14/1, 14/2, 15 to 25), (82/1, 4, 5 to 25), (83/5, 6, 15, 16, 25) is a forest, as per stand of the officials of Forest Department of State of Haryana and whether the contrary view taken in letters dated 24.4.2017 and 1.5.2017 by the Additional Chief Secretary (Forests) of the State is illegal, being in violation of the judgements of the Hon'ble Supreme Court in *T.N Godavarman Thirumalpad v. Union of India & Ors. (1997) 2 SCC 267* and *Lafarge Umiam Mining (P) Ltd. v. Union of India, (2011) 7 SCC 338*.

2. According to the applicant, Respondent Nos. 7 and 8, M/s Ajay Enterprises Pvt. Ltd and M/s Bharti Land Limited, propose to develop residential complex in the area in question is in violation of Forest (Conservation) Act, 1980. The Forest Department of State of Haryana, in several communications, acknowledged the area to be forest. Reference has been made to letter dated 13.4.2015 and 17.4.2015 from the Principal Secretary to Government of Haryana, Forest Department to the effect that status of area marked as parameters/criteria are yet to be finalized and approved by the Hon'ble Supreme Court. The status of areas marked as "Non Forest" ('N') may undergo further change when the criteria is finalized by the Ministry of Environment and Forests and adopted by the States. Letter dated 30.9.2015 from Deputy Conservator of Forests, Faridabad to Conservator of Forest, Gurgaon is to the effect that the area in question is only category of 'yet to be decided'. Letter dated 27.11.2015 from DCF, Faridabad to Conservator of Forest Gurgaon is that the area is 'deemed forest'. In the report dated 17.8.2017 given by the Conservator of Forest (Central), Northern Region, Ministry of Environment, Forest and Climate Change (MoEF & CC), it was held that the area in question was deemed forest. In spite of the said stand of the Forest Department, a contrary view has been taken in the impugned letters issued by the Additional Chief Secretary (Forests), Government of Haryana which is based on erroneous understanding of law. It is wrongly assumed that in absence of the area being 'recorded as forest' in the revenue record, the same cannot be taken as 'forest'.

3. In its written statement, the State of Haryana has taken the stand that the land is not a recorded forest, nor notified under Section 4/5 of the Punjab Preservation Land Act (PLPA), 1900 nor there was any plantation under the Aravali project. It is further stated that judgement of the Hon'ble Supreme Court in *M.C Mehta (2004) 12 SCC 118* stands distinguished in *B.S Sandhu v. Government of India & Ors (2014) 12 SCC 172*. The area is recorded as 'Gair Mumkin pahad' (non-cultivable hill) which does not mean 'forest'. Notification No. S.O 319 (F) dated 7.5.1992 (commonly referred to as Aravalli Notification) is not applicable herein as the area is not in Gurgaon or Alwar Districts. In Survey of India Map, 1976, only two trees are shown on the land. An Expert Committee was constituted by the State of Haryana, in pursuance of directions in *T.N Godavarman (Supra)*, which identified reserve forest, protected forest, un-classed forest areas notified under section 4 and/or 5 of the Punjab Land Preservation Act, 1900 and the present land was not covered in the report of the Expert Committee which was filed by the State of Haryana vide affidavit dated 25.2.1997. In view of the mandate of judgement in *Lafarge, (Supra)*, requirement to include representative of the State Forest Department in the Expert Appraisal Committee arises only if there is a doubt that the status of land is 'non-forest'. In the present case, there is no such doubt. Therefore, it became necessary to issue directions to the Divisional Forest Officer to permit felling of trees in favour of the project proponent. The status of the land is to be seen as on 25.10.1980, the date of enactment of Forest (Conservation) Act, 1980. Criteria for deemed forest is pending finalization. NCZ

does not fall within domain of Forest Department and forest laws are inapplicable to regulate the provisions of NCZ.

4. The stand of the project proponent is also on the same lines as that of the State Government.
5. Vide order dated 18.9.2018, after referring to the meeting of the National Capital Region Planning Board dated 20.12.2016, requiring the State to identify 'forest' and prepare geo-reference maps in terms of directions in *Lafarge (Supra)*, the Tribunal directed MoEF & CC to finalize the pending matter and also the State of Haryana to furnish its inputs.
6. An additional affidavit has been filed by MoEF & CC on 15.2.2019 which, *inter-alia*, annexes the Enquiry Report of their own Conservator of Forest (Central), Northern Regional office dated 17.8.2017 and letters of Government of Haryana dated 20.8.2018 and 16.1.2019 which are contrary to the report dated 17.8.2017.
7. We have heard learned counsel for the parties and have given our thoughtful consideration to the matter.
8. Contention on behalf of the applicant is that the stand of the State of Haryana, with which the MoEF & CC has agreed, that the land in question is 'non-forest land' for purposes of Forest (Conservation Act), 1980 is untenable in law. Letters of the Forest Department dated 8.11.2006 and 10.1.2014 are also based on erroneous understanding of law as shown by the Enquiry Report dated 17.8.2017. The test to be applied is not whether the area is recorded as forest in the revenue record

but whether the area is to be so treated by the Forest Department in terms of the dictionary meaning. Applying this test, the Forest Department has always treated the land as 'deemed forest'. Moreover, status of the land is to be seen not only on the date of enactment of Forest (Conservation) Act, 1980 but also with reference to the subsequent period, as held in *M.C Mehta v. Union of India & Ors: In re: Kant Enclave matters 2018 SCC online SC 1426*. Area is to be treated as Aravalli for purpose of NCZ. Therefore, Regional Plan, 2021 of NCRPB would be applicable where only 0.5% construction is permitted restricted to regional recreational activities. The project is also in contravention of Regional Plan, 2021.

9. To determine the question, it will be appropriate to refer to the factual aspects, as recorded in the Enquiry Report dated 17.8.2017 submitted by Conservator of Forests (Central), Northern Regional office to the DIG in the MoEF & CC (Annexure R-II on record). Relevant paras of the report are as follows:

"6. Findings: After hearing all the stakeholders, perusing the documents so collected including court orders and working plan prescriptions, the facts in the matter are narrated as under:

- i. The whole issue is found to be revolving around defining 'forest' by dictionary meaning. In compliance to Hon'ble Supreme Court order dated 12.12.1996 in the Writ Petition (civil) No.202/1995 in the matter of T.N. Godavarman vs Union of India and Others and order dated 06.07.2011 in Lafarge case, the Ministry of Environment, Forests & Climate Change, New Delhi initiated a consultation process in the PCCF's meeting, held in New Delhi on 25th August, 2014, in which it was reiterated that the state of Haryana has not formulated*

parameters to classify an area as "forest" by dictionary meaning so far. The process of defining 'forest' by dictionary meaning is still inconclusive in the state of Haryana.

- ii. During the enquiry, the State Govt. Haryana could not produce any record showing conclusive action on defining the 'forest' by dictionary meaning in the State till date.
- iii. During the course of enquiry, it was gathered that the process of delineation of various components of NCZ in Haryana to identify forest areas of about 50,000 acres in Haryana Sub Division is still inconclusive.
- iv. The decision taken in the meeting dated 03.03.2017, held at Chandigarh under the chairmanship of Chief Secretary, Haryana, "it was recommended to include any area in old Gurgaon District as per Notification dated 07.05.1992 as 'Aravali Range' and so part of confirmed NCZ. The justification given for this is that in some cases the use of land covered in the Aravali notification in Gurugram district has undergone change subsequently and as per ground report such land is being used for agricultural purposes and under roads and even some cases, the construction is existing on such lands."
- v. The decision dated 03.03.2017 is in contradiction of the NCR Planning Board meeting (35th) dated 09.06.2015 and 20.12.2016 vide which the Chief Secretary, while referring to the statement given by the Chief Minister, Haryana relating to maintaining status quo on the identified 'forest' of about 50,000 acres in Haryana Sub-region, stated that Govt. of Haryana is committed to maintain these areas as they are at present till the definition of 'forest' is finalized and noted that the Notification dated 7th May, 1992 issued by the MoEF&CC defines "specified areas" of the Aravali Range in Gurgaon district of the State of Haryana and Alwar District of the State of Rajasthan (as on the date of notification). These 'specified areas' are to be included while identifying/delineating 'Aravali in entire NCR."
- vi. Hon'ble Supreme Court judgement dated 6th July, 2011 in Lafarge Umiam Mining Private Ltd and T.N. Godavarman vs. Union of India & Others in IAs No.

1868, 2091, 2225-27. 2380, 2568 and 2937 in WP (C) No. 202 of 1995 with Transfer Petition (C) No. 277 of 2010 (iii) if the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt, the site shall be inspected by the State Forest Department along with the regional office of MoEF to ascertain the status of forests, based on which the certificate in this regard be issued. In all such cases, it would be desirable for the representative of the State Forest Department to assess the expert Appraisal Committee.

vii. The PCCF, Haryana vide office order dated 20.06.2017 (Annexure-XXVII), constituted a committee in compliance to the Addy. Chief Secretary (Forests) letter dated 24.04.2017 to sort out the difference in opinion regarding presence of vegetation cover in the land belonging to M/s Bharti Land Ltd. However, there is no mention of any representation of MoEF&CC in the committee as mandated by the Lafarge judgement. The State Forest Department could not produce any record of visit of this committee to the disputed area.

viii. The explanatory note of Prl. Secy (Forests) letter dated 17.04.2015 addressed to PCCF, Haryana, mentions that "Ministry of Environment, Forests and Climate Change. Govt. of India is in the process of formulating parameters/criteria for identification of area as forest by dictionary meaning in pursuance of the directions of the Hon'ble Supreme Court dated 12.12.1996 in T.N.Godavarman vs. Union of India and Others in WP (Civil) No. 202 of 1995. The parameters/criteria are yet to be finalized and approved by the Hon'ble Supreme Court. The status of areas marked as "Status yet to be decided" will be determined when the criteria/parameters for identification of an area on forest by dictionary meaning are finalized by MoEF&.CC.

ix. In OA No. 269/2013 Haryali Welfare Society vs. Union of India & Ors., Hon'ble NGT vide order dated 20.07.2015 (Annexure-XXVIII) directed that respondent no. 2 (the State), respondent No. 3 (the Directorate of Town and Country Planning) and respondent No.4 (Department of Forest) shall ascertain and verify whether the land in respect of which they propose to

pass any order or direction has been identified as forest or not as aforesaid and shall not pass any order or direction in contravention of Forest (Conservation) Act, 1980.

x. *Inspite of directions contained in the order dated 20.07.2015 in Haryali Welfare Society case in OA No. 269/2013, and directions contained in the explanatory note dated 17.04.2015 of Prl. Secy (Forests), Govt. of Haryana, the clear felling of trees has been accorded, which should not have been avoided.*

xi. *As per felling permission dated 23.06.2017, about 38941 no. of plants and trees existed on spot, indicating that 1846 no, of trees-existed per ha (as against 1000 trees per ha are planted on a blank area). The density has been very high. If only root stock is counted, about 7843 root stocks were enumerated, being 372 per hectare. This depicts that the land in question had moderate to dense vegetation. As per vegetation status, the stand of Haryana Forest Department to treat this land as deemed forest seems to be justified.*

xii. *There is violation of EC Part 'A' Specific Condition No. 26 by the Project Proponent, which, inter-alia, states that "The project Proponent shall not cut any existing tree and project landscaping plan should be modified to include those trees in green area. The project proponent, while applying/requesting felling of about 1000 mesquite bushes, has deliberately misled the State Govt. by ignoring the above referred condition. The project proponent has also violated Part- "B" General Condition (xiv) which stipulates "The project proponent is responsible for compliance of all conditions in Environmental Clearance letter and project proponent cannot absolve himself/herself of the responsible by shifting it to any contractor engaged by project proponent".*

xiii. *The letter dated 24.4.2017 of Addl. Chief Secretary (Forests) directed the PCCF that "Since this area does not constitute forest component of NCZ as per the decision taken by NCR Planning on 20.12.2016, you are directed to accord necessary approval for felling of mesquite trees to the applicant as per the provisions of the PLPA 1900 ." The PCCF was further directed vide*

letter dated 01.05.2017 of Addl. Chief Secretary (Forests) that "there will no NCZ forest category of 'status yet to be decided'."

However, no such decision is recorded in the said minutes dated 20.12.2016 of the NCRPB. On the contrary, it records "it was concluded that these specified areas are to be included while identifying/delineating Aravallis in entire NCR". The term specified areas refers to the Aravalli Notification dated 7th May, 1992 and they include:-

- i. Gair Mumkin Pahar.
- ii. Gair Mumkin Rada.
- iii. Gair Mumkin Behed.
- iv. Banjad Beed.
- v. Rundh.

The land in question is recorded in the Jamabandi as 'Gair Mumkin Pahar' and thus clearly a part of the Aravali and thus would automatically be part of NCZ. This has been the view of the MoF&CC before the NCRPB. In fact, the district level committee duly constituted by Govt. of Haryana itself correctly delineated the said land under forest 'yet to be decided' category of NCZ. Thus, the letter granting felling permission on the above reasoning is legally incorrect.

- xiv. The MoEF&CC, Gol letter F. No. I-48/2012-FC (pt) dated 23.09.2014 clearly directs as under: ".....while delineating the various components of NCZ, it may kindly be ensured that subject to final acceptance of the Hon'ble Supreme court, areas as per decision taken in a meeting of the PCCFs held under the chairmanship of DGF&SS in this Ministry on 25th August 2014 shall mandatorily be treated as forest"

As forests are listed under 17A of the distribution of in the concurrent list of the Constitution of India, the directions of the Central Government will prevail.

Moreover, the maps prepared by the FSI, clearly list the said land under 'open' and 'scrub' forests. These would constitute legally valid government records and

therefore the said land would therefore be a forest as per dictionary meaning in line with the directions of the Apex Court in the Godavarman case as directed below:

"..The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership."

The said land is thus a forest as per dictionary meaning.

xv. The Apex Court in the Lafarge Case clearly directed that in the event of a dispute regarding the status of a piece of land as forest/non-forest, a committee constituted by the PCCF with representation from the Regional Office of the MoEF& CC would examine and determine the same. In the words of the Court, this was necessary to prevent new cases or diversion of forest lands as a fait accompli'.

In the present case, the State Forest Department is categorical in classifying the said land as a deemed forest. It cannot be denied that a dispute exists as to the status of the area. In such a case, the directions of the Apex Court in the Lafarge judgement should have been followed to prevent 'fait accompli'."

10. Contrary to the above, the stand taken in the impugned letters and letters of the Government of Haryana dated 20.8.2018 and 16.1.2019 is as follows;

"3. In this matter, the Haryana Forest Department has clarified the following and this Government endorses the same:

- i. That the area in question measuring 66.49 acres, falling in the revenue estate of village Sarai Khwaja is not recorded either as Protected or Reserved or any such other definition that makes it a forest or forest land otherwise:
- ii. That the area in question happens not to be closed under special order notified under section 4 and 5 of the Punjab Land Preservation Act, 1900 (PLPA) making it to

be regulated as per the existing dispensation of the prevailing law, as forest land (for this purpose. the clarificatory order passed by the Hon'ble High Court of Punjab & Haryana dated 4th September, 2009 in CM 12170 of 2009 in CWP No. 20134 of 2004 is appended to this letter as Annexure- A which in the para of relevance read as and clarify that only those lands/areas forming part of notification issued under Section 3 of the PLPA 1900 in respect of which restrictions against breaking up or cultivation have been imposed under Sections 4 [a] or 5 [a] of the said Act, are declared as 'forest lands' for the purposes of Indian Forest Act and Forest (Conservation) Act, 1980, and the said area shall not be used for non-forest purposes.....' (emphasis added). It is relevant to emphasize it is only by way of notifying through special order under section 4 and 5 of the PLPA that the restrictions under 4[a] or 5 [a] is invoked to be imposed. Further, under notified area through such special order only about 30.490 Hectares i.e. about 305 sq. km. of land (forming a part of about 0.7% of the geographical area of Haryana) happen to be included as on this date.

iii. That the area in question is included under the notification made under general order under section 4 of the PLPA (the relevant notification is appended as appended as Annexure B to this letter). The only restriction under the dispensation of these orders happens to be as summarized below:

‘..... Governor of Haryana hereby prohibits the following act

The cutting of trees of timber except eucalyptus and popular or collection ‘--- provided that the owner of the land may sell the trees and timber after obtaining a permit to do so from the Divisional Forest Officer of the concerned Division

iv. It is pertinent to mention that in Haryana there is no "Tree Act and, further, these restrictions facilitate the mechanism to regulate the felling of trees.

v. It is also, further pertinent to mention that in the absence of Tree Act, the General Order restriction (under PLPA) on felling of Trees without obtaining the prior permission extends over an area of about 10.89,800 Hectares which accounts for about 24% of the

geographical area of Haryana (about 8 out of 22 districts). Such an extended expanse of area, that includes a vast proportion of privately owned area, can never be brought indirectly under the purview of the rigors of the Forest and related laws.

- vi. That the areas regulated under the General Order under section 4 of the PLPA under these circumstances, were never a part or any land regulated or considered as 'Forest Land'.*
- 4. Further to it, the land in question is neither a part of Aravali Plantation Project nor of Aravali Notification.*
- 5. Under these circumstances, it is reiterated that, beyond the scope of any doubt, the land in question is not a 'Forest Land' for the purposes of any Forest related law, including the Forest (Conservation) Act.1980.”*

11. Thus, it is obvious that while the area is not covered under Section 4 and 5 of the PLPA Act, nor recorded as forest nor may be forest on the date of enactment of Forest (Conservation) Act, 1980. It is also undisputed that in maps prepared by the FSI lists, the area is shown as 'open' and 'scrub' forests, as noted in para xi and xiv of the Enquiry Report of the Northern Regional office of MoEF & CC dated 17.8.2017 submitted to DIG of MoEF & CC. Thus, the stand of the Forest Department is consistent with the judgements of the Hon'ble Supreme Court and contrary stand is not valid.

12. As already noted, the test to be applied to determine whether the area is forest area or not has been laid down in *T.N Godavarman (Supra)* as follows:

“4. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also

any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.”

13. The above view has been reiterated in Lafarge (Supra) as follows:

“89. By an order dated 12-12-1996 by a Division Bench of this Court in Writ Petition (C) No. 202 of 1995 with another in T.N. Godavarman Thirumulpad v. Union of India, this Court directed each State Government to constitute within a specific period an Expert Committee to identify areas which are forests irrespective of whether they are so notified, recognised or classified under any law and also identify areas which were earlier forests but stand degraded, denuded or cleared. The Committee was to be headed by the Principal Chief Conservator of Forests. This order dated 12-12-1996, thus, clarified that every State Government seeking prior approval under Section 2 of the 1980 Act shall first examine the question relating to existence of forests before sending its proposal to the Central Government in terms of the form prescribed under the Forest (Conservation) Rules, 1981 (see Rule 4). Thus, the requirement of submitting the proposal for forest diversion under the 1980 Act is exclusively the obligation of the State Government.”

14. In view of above, the stand of the State of Haryana that land was not recorded as forest land and has to be taken as non-forest on that ground is erroneous in law. Moreover, as clarified in *M.C Mehta v. Union of India & Ors: In re: Kant Enclave (Supra)*, status of the land is

to be seen not only on the date of enactment of Forest (Conservation) Act, 1980 but also with reference to subsequent status.

15. We may also observe that MoEF & CC has mechanically upheld the stand of Haryana ignoring the Enquiry Report of the Northern Regional office of MoEF & CC dated 17.8.2017 itself. If such an Enquiry Report was to be disagreed, it was necessary for MoEF & CC to have given its reasons. The Enquiry Report was based on valid factual and legal basis which have been brushed aside in agreeing with the erroneous view of the State of Haryana.

16. It is difficult to uphold the stand of the State of Haryana with which MoEF & CC has agreed that the area in question is not a forest area. Once it is so, mere fact that the area is included in part of Sector 47 in the Master Plan is not conclusive to hold the same to be not covered by the definition of 'forest' in terms of law laid down by the Hon'ble Supreme Court in *Godavarman and Lafarge (Supra)*.

17. The land in question is, thus, held to be 'deemed forest'.

The Original Application stands disposed of accordingly.

Adarsh Kumar Goel, CP

Raghuvendra S. Rathore, JM

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Satyawan Singh Garbyal, EM

Dr. Nagin Nanda, EM

March 08, 2019

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