

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

Original Application No. 276/2016
(M.A. No. 512/2016)

IN THE MATTER OF:

Nishant Kumar Alag,
Son of Shri Radheysham Alag,
Resident of H.No.2, First Floor,
Main IGNOU Road, Neb Sarai, New Delhi-110068

.....Applicant

Versus

1. State of Punjab,
Through its Chief Secretary,
Government of Punjab,
Punjab Secretariat,
Chandigarh-160017
2. Principal Chief Conservator of Forests,
Department of Forest and Wildlife Preservation-Govt. of
Punjab,
Forest Complex, Sector 68,
Sahibzada Ajit Singh Nagar, Mohali,
Punjab- 160062
3. Union of India,
Ministry of Environment and Forests and Climate
Change,
Through its Secretary,
Indira Paryavaran Bhawan, Jorbagh Road, Aligunj,
New Delhi-110003
4. Punjab Irrigation Department,
Through Secretary,
Madhya Marg18-B, Sector-18
Chandigarh-160018

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Saurabh Sharma, Adv.

COUNSEL FOR RESPONDENTS:

Mr. Sakya Singha Chaudhari, Mr. Nishant Talwar and Mr. Samyka Mukku, Adv. for State of Punjab. Ms. Deep Shikha Bharati, Adv., Mr. Mukul Singh, Adv. for MoEF & CC.

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)

Reserved on: 30th July, 2018

Pronounced on: 16th August, 2018

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1. Whether the judgment is allowed to be published on the net?
 2. Whether the judgment is allowed to be published in the NGT Reporter?

DR. SATYAWAN SINGH GARBYAL, (EXPERT MEMBER)

1. In this Original Application the Applicant has submitted that along the Bist Doab Canal around 24742 trees are being felled over a forest area of around 107.25 hectares along this canal and its distributaries in Nava Shehar and Jalandar Districts of Punjab in violation of the Forests (Conservation) Act, 1980. It has been submitted:-*“While some Officers of Forest Department claim that trees on both sides of the canal come in the category of protected forests, other have an opposite stand”* and it has further been submitted that the Conservator of forests (Shiwalik Circle)

has objected to the reports of the Divisional Forest Officer Nawashahar who had sought to handover land to irrigation department after transferring the trees to the Punjab Forest Development Corporation for auction and felling. The Applicant has also submitted that the PCCF supports the line of action adopted by the DFO Nawashahar. He is reported to have stated:-

“The trees were planted in an unauthorised manner on Irrigation Department land over the years to which no one objected. It is not a forest area. Only 24777 trees on non-forest area are being felled. An equal number of trees on forest land along the canal are not being touched”.

2. The Applicant has stated that orders dated 12.12.1996 passed by the Hon'ble Supreme Court in Writ petition no. 202/1985 T.N. Godavarman Vs. Union of India and Ors. have been violated. He has therefore, prayed as follows:

I. Direct that Non forest use of the forest area along the Bist Doab Canal be stopped immediately.

II. Direct that the Responsibility be fixed and action taken against concerned officers for violation of the provisions of the Forest (Conservation) Act, 1980 and orders of the Hon'ble Supreme Court.

III. Direct the Restoration of the forest area along the Bist Doab Canal, as it used to be prior to the felling.

IV. Direct that complete files/records be produced by Respondents 1, 2 and 3 before the Hon'ble Tribunal.

3. In the affidavit filed on 01.02.2017 by the DFO Nawashahar on behalf of Respondent No. 1 & 2, it has been submitted in para 2 that as per the approved working plan of forest division Garhshankar the forest area of Bist Doab Canal is 58.56 hectares and as per

approved working plan of the Jalandhar forest division the area of the Bist Doab Canal is 48.69 hectares. Thus, the total area which falls within the Bist Doab Canal is 107.25 hectares. It has also been submitted in para 3 that not even a single tree have been felt in the area of 107.25 hectares of forest land due to rehabilitation of the proposed project of renovation of Bist Doab Canal.

4. PCCF (HoFF) had directed Conservator of Forest Shiwalik Circle Punjab Hoshiarpur and Divisional Forest Officer Nawashahar at Garhshankar from 22.01.2016 to initiate action for removal of trees as per the marking lists of trees prepared by the Divisional Forest Officer from RD 37500 and RD 74000.
5. From the original records filed by the Forest Department in compliance of order of this Tribunal dated 09.09.2017, it appears from the letter of Conservator of Forest, Shiwalik Circle, Hoshiarpur to the Divisional Forest Officer at Nawashahar at Garhshankar on 28.03.2016 that he had objected to the order of the Divisional Forests Officer Nawashahar dated 22.03.2016 by which he had allowed to fell 24777 matured green trees and young pole crop through auction by Punjab State Forest Development Corporation and also to return/handover land along BDC (Bist Doab Canal) and its distributaries/minors to Irrigation Department. He had in his letter clearly mentioned that in view of the Hon'ble Supreme Court's

Order dated 12.12.1996 in T.N. Godavaranam Thirumulkpad Vs Union of India and Ors. that the land/area along with Bist Doab Canal (BDC) and its various distributaries/minors, where trees and plants are standing, is a forest land/area beyond any doubt even if ownership of land along the BDC and its various distributaries/minors is of Irrigation Department. He had also mentioned at page 2610 para 4 of the same letter that due to applicability of Forest (Conservation) Act 1980, Divisional Forest Officer, Nawashahar at Garhshankar had sent number of cases to MoEF, Government of India in the past also for seeking permission for diversion of forest land along with BDC for non-forestry purpose under Forest (Conservation) Act, 1980. By way of example he had mentioned the case of Ropar by-pass flyover and transmission lines and some other cases.

6. The Conservator of Forest, Shiwalik Circle had stated in the same letter that order of the DFO is ultra vires on following grounds:-

(i) Divisional Forest Officer is not authorised to issue order to fell/transfer for auction such large number (24777) of green trees exceeding annual yield prescribed in working plan for 2015-16 in Canal Working Circle as felling of green Shisham and advance pole crop which contradict marking rules mentioned in Working Plan of Garhshankar Forest Division and hence this felling of green trees amounts to major deviation from the provisions in Working plan therefore requires approval of MoEF, Government of India.

(ii) Divisional Forest Officer is not authorised to delist/derecognize/declare any forest land as non-forest

without approval of MoEF, Government of India/Hon'ble Supreme Court as it requires major changes/corrections in Forest record including Annexure G submitted in Hon'ble Supreme Court.

(iii) No permission/approval was accorded by Principal Chief Conservator of Forests (HoEF), Punjab to fell 24777 green trees vide letter no. Forest-2/deviation-128/14591-92 dated 22/1/2016 and Forest-2/devistion-128/278 dated 4/2/2016, it is a wrong interpretation of letters by you.

(iv) The order under reference does not specify following points and also not supported by following documents:

(i) RD wise extent of forest area (length and width) declared/de-notified as non-forest area to be released to Irrigation Department.

(ii) Map of Forest and declared Non-forest area and their boundaries on map.

(iii) RD wise location of all trees stated to be unauthorized from boundary of forests on map.

(iv) RD wise joint demarcation report which includes all stake holders essentially Revenue Department representatives.

Therefore he had declared the order passed by the Divisional Officer Nawashahar at Garhshankar vide Endmnt no./Rev/8241-47 dated 22.03.2016 as null and void and thus quashed.

7. Subsequently, PCCF (HoFF) vide its letter dated 01.04.2016 had constituted a committee to report felling of trees on BDC for widening/ strengthening of canal (BDC and its distributaries/minors). The report of the Committee is as Annexure R at pg. 202. The Committee had concluded and recommended as follows:-

*A) The notifications for Protected Areas of 1958 as well as the list of forest areas submitted to the Hon'ble Supreme Court under **Annexure-G** just mention BDC in general terms*

without giving any specific dimensions of the forest area. It is the Working Plan of Garhshankar Jallandhar Forest Divisions which specifies a forest area of 107.25 ha along BDC and 67.58 ha along its distributaries and minors which are taken up for restoration. This implies that apart from this area along BDC and its distributaries/minors, rest is non-forest area. The Whole confusion regarding applicability of FCA, 1980 seems to have been arisen due to lack of proper demarcation report, clearly delineating forest and non-forest areas. This segregation can only be ascertained by proper joint demarcation of the area by revenue officials along with the presence of staff of both the Forest Department as well as Irrigation Department. The material on the file is insufficient to conclude if proper demarcation procedure of the area has been followed by the DFO or not and whether all the instructions issued by PCCF, Punjab from time to time in such cases have been followed including preparation of maps of forest and non-forest areas. After demarcation of Forest and Non-Forest Land, Divisional Forest Officer should give a certificate that Forest area as per approved working plan is intact (i.e. 174.83 ha, the details of which are included in Annexure-1).

B) Trees on non- forest land including inner slopes of canals/distributaries/minors may be removed under interdepartmental rules and as per the provisions of existing working plan and according to the instructions issued by PCCF, Punjab from time to time.

C) Trees on forest land if any should be removed after sanctioning deviation by the Competent Authority. However, if diversion of forest land is also involved, then case for approval under FCA should be submitted by the Irrigation Department.

D) For those trees standing on non-forest land, which have also been enumerated and their growing stock has been included in the prescribed yield of the Canal Working Circle, case for necessary amendments in prescribed yield of the canal working circle and working plan should be moved separately by the concerned DFO through CF Shiwalik to CCF (Working Plan) for necessary amendments in order to avoid over felling during the plan period.

E) *It is further observed that DFO, Nawashahar's order by which he has released 24743 trees does not have any proper marking list of trees indicating enumeration numbers, girth and species etc. and also does not enclose any abstract of volume, which should be set right before proceeding further.*

F) *The Committee further felt that in future, Irrigation Department should reconsider its age old approach and redesign the canals by exploring options of vertical digging to increase their discharge capacity, even if it entails much higher expenditure. It is of paramount importance to minimize reduction in green cover in the interest of Environmental Conservation.*

8. The Forest Department Punjab had also sought clarification from the MoEF, Northern Regional Office vide their letter dated 10.02.2016. The Regional Office of MoEF at Chandigarh had then sought guidance in the matter from the Ministry on 23.02.2016 regarding felling of 24544 green trees growing along BDC for the restoration of original canal width as per State Policy. The clarification was sought on following points:

1. *The canal in question is owned by Irrigation Department, the ownership of trees growing over/along canal is therefore Government.*

2. *From the corner of existing bed width, the trees which falls inside the slopes, bed and dowell/shoulder upto 20 feet are required to be felled. The length of the canal from where the felling is proposed is from RD 37500 to RD 74000 i.e. 36500 or 36.5 Km. The area in ha comes to 2244 ha and the density as 1.0 (1093 trees per ha) as 24544 trees are to be felled.*

3. *As the canal width 64-99 feet is to be restored by Irrigation Department. Hence there is no land use change as such but for restoration, clearing of naturally grown trees is required may attract the provision of FCA.*

4. *It is not clear whether the trees proposed for felling are of natural or planting origin. As the trees are growing on silted berm, these are not part of strip forests managed under Canal Working Circle but might have been planted as part of strip forest management only. If that is the case, plantations form part of Government record. If any trees are of natural origin, then also for the clear felling approval under FCA may be required.*

9. And the Ministry had clarified to the PCCF (Central) Regional Office Chandigarh on 11.04.2016 wherein it has been stated that, *“felling of trees planted by forest Department on the land which has not been notified/recorded as ‘forest’ in any of the Government record or has not been categorized as ‘forest’ by Hon’ble Supreme Court or any other court of law will not require approval of Central Government under the Forest (Conservation) Act, 1980. The felling of such trees will be governed by the provisions of the Indian Forest Act 1927, Local Forest Acts and the rules/guidelines framed thereunder.”*

10. It is noteworthy to see the notification 1122-FT-58/1195 of the Revenue Department dated 03.05.1958 wherein strips of Government forest or waste lands whether under tree growth or not on either side of all roads, canals and railways in the State of Punjab except those in the Patiala Division described in the Schedule have been declared as the protected forests. The Annexure C of Pg.17 under the Schedule the description and the situation of the canal are given as follows:-

All land on either side of PWD (Irrigation Branch) Canals and canal roads including main canals, branches, distributaries, minors, escapes and bunds and also other land of that department transferred to the Forest Department for Management.

11. It is therefore, clear that with all lands on either side of the canals and canal roads, distributaries, minors and bunds are notified 'protected forest'. Therefore, the trees which are falling on either side of the canal fall within the category of 'protected forest'.
12. It has been submitted by the Additional Advocate General for the State of Punjab that felling of trees within the BDC did not constitute felling of trees in forest areas as defined under Forest (Conservation) Act, 1980 and therefore did not require prior approval of the Central Government as these trees were standing on the inner sides of the canal and were not handed over to the Forest Department. In this regard they have relied upon communication dated 11.04.2016 issued by the Ministry of Environment Forest. According to them it clarifies that the trees from the BDC rehabilitation programme did not fall within the forest area.
13. We do not agree with the submission made by the Additional Advocate General Punjab that the Ministry of Environment Forest and their letter dated 11.04.2016 verifies that trees from the BDC rehabilitation programme do not fall within the forest area. The letter of 11.04.2016 of MoEF merely states that:

“felling of trees planted by forest Department on the land which has not been notified/recorded as ‘forest’ in any of the Government record or has not been categorized as ‘forest’ by Hon’ble Supreme Court or any other court of law will not require approval of Central Government under the Forest (Conservation) Act, 1980. The felling of such trees will be governed by the provisions of the Indian Forest Act 1927, Local Forest Acts and the rules/guidelines framed thereunder.”

It nowhere says that trees along BDC are falling within non forest area as submitted by the Additional Advocate General Punjab. Moreover, it has been clearly stated by the Forest Department that these trees are covered under approved Working Plan, and proposals for diversion of similar area along BDC have been sent to MoEF in the past for seeking prior approval under Forest (Conservation) Act.

14. We are clear in our mind that according to the notification of 1958 all lands on either side of the BDC including its distributaries and minors, escapes and bunds clearly fall within the ‘protected forest’ irrespective of the fact that these are lands under the ownership of Irrigation Department and including those which are transferred to the forest department for the purpose of the management.
15. Therefore, the trees which have been felled along BDC totalling 24777, which in some places are mentioned as 24544, have been felled in violation of the provisions of the Forest (Conservation) Act 1980. The PCCF had chosen to overlook the objections of Conservator of Forest, Shiwalik Circle, Hoshiarpur who clearly stated that the

felling of trees in the area in question will attract the provisions of the Forest (Conservator) Act 1980 and therefore prior approval of the MoEF is required to be sought as was done in similar cases along BDC in other places like Ropar etc in the past. The DFO Nawashahar had also ignored the report of the range forest officer Kathgar and Range Forest Officer Balachaur who had clearly reported that this land along BDC where enumerated trees were standing was forest area as has been reported in the letter of the Conservator of Forest Shiwalik Circle dated 28.03.2016. It appears that the DFO and the PCCF deliberately ignored this fact and chose to proceed against the advice of the Conservator of Forest without any basis. We hold that there has been wilful violation of the provisions of the Forest (Conservation) Act 1980 in granting permission to fell huge number of trees i.e. 24777 without following the procedures laid down under the provisions of the Forest (Conservation) Act, 1980.

16. We therefore direct as below:-

- I. The entire case may be investigated thoroughly by an Officer not below the rank of Additional Chief Secretary to affix the responsibility upon the officers who are responsible for violation of Forest (Conservation) Act 1980 and take strict action in accordance with law.

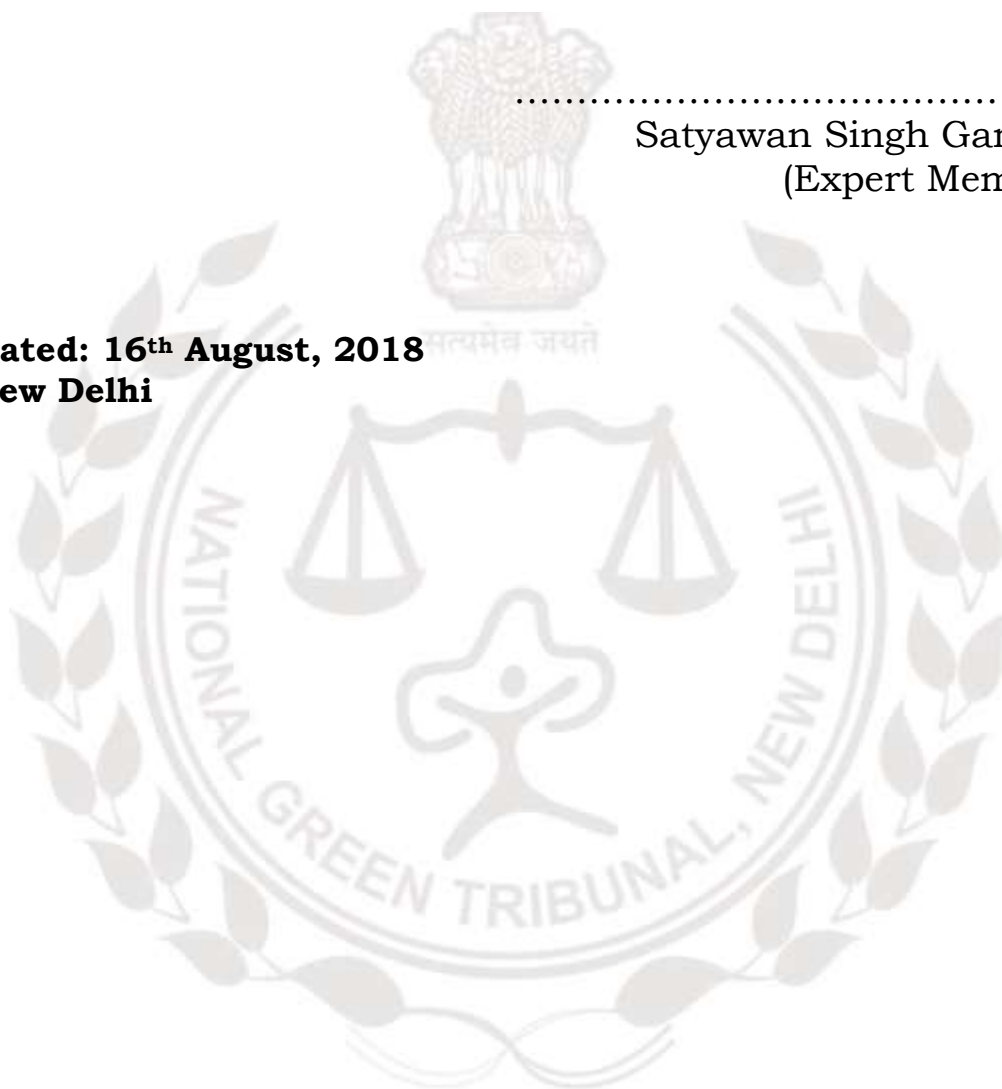
- II. Compensatory afforestation may be raised over equivalent area of the non-forest land in lieu of the forest destructed. The amount required for raising compensatory afforestation may be worked out by the Forest Department and this may include provisions for protection and maintenance for a period of 5 years. The entire cost will be borne by the Irrigation Department.
- III. The violation of Forest (Conservation) Act case may proceeded in accordance with the procedure laid down under law.
- IV. The entire value of the forest produce realised from sale of 24777 trees may be recovered from the concerned agency i.e. Irrigation Department. This amount shall be used by Forest Department in greening efforts of the Department by raising plantations in non-forest land elsewhere in the State. It may be pertinent to add here that Punjab is already forest deficit state having less than 10% of the land under forests and by destructing forests in forest lands as has been done in this case the forest cover will come down further. Therefore, as far as possible tree plantations have to be raised in non-forest land to increase forest cover in the State.
17. Consequently, this Original Application No. 276 of 2016 is disposed of with the aforesaid directions.

The Miscellaneous Application No. 512 of 2016 does not survive as the Original Application has already been disposed of.

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Satyawan Singh Garbyal
(Expert Member)

Dated: 16th August, 2018
New Delhi



NGT