

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

**Original Application No. 309 of 2013**

(M.A. No. 443 of 2015, M.A. No. 720 of 2015, M.A. No. 721 of 2015, M.A. No. 857 of 2015, M.A. No. 920 of 2015, M.A. No. 921 of 2015, M.A. No. 73 of 2016, M.A. No. 74 of 2016, M.A. No. 294 of 2016, M.A. No. 1045 of 2016, M.A. No. 101 of 2017 & M.A. No. 566 of 2017)

**And**

**Original Application No. 384 of 2015**

(M.A. No. 1168 of 2016)

**IN THE MATTER OF:**

**Original Application No. 309 of 2013**

**National Green Tribunal**

Bar Association

Through the Secretary

Trikoot II, Bikaji Cama Palace

New Delhi

.....Applicant

*Versus*

**1. Union of India**

Through the Secretary

Ministry of Environment & Forest

Paryavaran Bhawan, CGO Complex,

Lodhi Road, New Delhi-110003

**2. State of Uttranchal**

Through Chief Secretary

Department of Environment and Forest

Uttranchal Secretariat, Dehradun

Uttrakhand-248006

**3. Divisional Forest Officer**

IT Cell, PCCF Office,

87-Rajpur Road,

Dehradun, Uttrakhand-248001

**4. VS Sidhu**

IPS Officer

Police Officers Colony

Kishanpur, Dehradun

Uttrakhand-248001

.....Respondents

**Original Application No. 384 of 2015**

**Shri B.S. Sidhu**

R/O 2, Police Officers Colony  
Kishanpur, Dehradun

.....Applicant

*Versus*

**1. Union of India**

Through the Secretary  
Ministry of Environment & Forest  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi-110003

**2. State of Uttarakhand**

Through its Chief Secretary, Secretariat,  
Subhash Road,  
Dehradun

**3. Shri. Ved Prakash Mahawar**

S/o Shri Ramanad Mahawar  
R/O Anarwala PS Cantt.  
Dehradun

**4. Shri Satish Gupta**

S/o Shri Ramanad Mahawar  
R/o Anarwala PS Cantt.  
Dehradun

**5. Shri Sharad Sood**

S/o Shri. Satish Sood  
R/o 61 Dispensary Road  
Dehradun

**6. Shri Kuldeep Negi**

S/o Govind Singh Negi  
R/o 14/1, Nai Basti, Chukuwala, Indra Colony  
Dehradun

**7. Shri Virender Dutt Joshi**

S/o Shri Sant Ram Joshi  
R/o Ekta Vihar, Lane No.9  
House No.2 Sahastradhara Road  
Dehradun

**8. Shri. Jagmohan Rawat**

Posted as Van Daroga, Raipur Range  
Dehradun

**9. Shri. Sri Prasad Saklani**

Posted as Van Daroga, Raipur Range  
Dehradun

**10. Shri Dheeraj Pandy**  
S/o Shri L.M Pandey  
R/o 68/364, I-1, Hira Nagar  
Haldwani

.....Respondents

**COUNSEL FOR APPLICANT:**

Mr. Raj Panjwani, Sr. Adv. with Mr. Utkarsh Jain, Ms. Meera Gopal,  
Advs

**COUNSEL FOR RESPONDENTS:**

Mr. K. R. Chawla, Mr. T.S. Bindra, Advs. for Petitioner  
Dr. Abhishek Atrey, Adv for MoEF  
Ms. D. Bharathi Reddy and Ms. Vidyottma, Advs.  
Mr. V. K. Shukla Adv  
Mr. Aniruddh Joshi, Adv. for R-6  
Mr. Ajay Marwah, Adv for State of HP  
Mr. Vivek Shukla. Advs for R-3

**JUDGEMENT**

**PRESENT:**

**HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE, JUDICIAL MEMBER**  
**HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER**

**Reserved on: 16th April, 2018**  
**Pronounced on: 27th August, 2018**

- 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?**

**RAGHUVENDRA S. RATHORE J (JUDICIAL MEMBER)**

1. As both these applications involves the same parties and relates to same subject matter, that they are being decided by this common order.

**Facts :**

2. National Green Tribunal Bar Association has filed the Original Application (309/2013) under Section 14 of the

NGT Act, 2010, for redressal of the grievance, by seeking relief from the Tribunal for directing the concerned authorities to take appropriate action. Further, it has prayed for an order to cancel the sale deed which has been executed in respect of the forest land in question. It has also been prayed that the respondents be directed to restore the area.

**3.** The applicant Bar Association has raised the issue pertaining to selling of reserved forest land and illegal felling of trees in Mussoorie Forest Division, near Dehradun Mussoorie highway. The area had been notified as a reserved forest under Section 4 of the Indian Forest Act, 1927; vide notification no. 23(2)-94 (xiv)-B 67 dated 22<sup>nd</sup> February, 1968. The land was then declared as Reserve Forest under Section 20 of the said Act, vide notification no. 6789/54-kh-20 (382)-69 dated 1<sup>st</sup> May, 1970. Further, it is submitted by the applicant that illegal felling of trees and sale of reserved forest land is in contravention of the provision of National Forest Policy, 1988 and Forest (Conservation) Act, 1980.

**4.** It has also been averred in the application that various newspapers in the State of Uttarakhand had reported that a senior officer of Indian Police Service, Mr. B.S Sidhu, posted as DG in the Government of Uttarakhand, had got a

fraudulent sale deed executed from one Mr. Nathu Ram and purchased the land which was declared as a reserved forest by the aforesaid notifications, falling in Mussoorie Forest Division. The mutation of the land was then got entered in his own name. The sale deed was executed in the year 2012. It is also averred that it had come to the knowledge of the applicant on 9<sup>th</sup> March, 2013 that four trees were felled illegally, in the area of reserved forest, in Mussoorie forest division. During investigation of the case, it was found that on 18<sup>th</sup> March, 2013, twenty one Saal trees were felled in the same area and the wood was recovered on the spot.

5. According to the applicant, on various media reports, a number of investigations were initiated for illegal felling of the trees. It was found during investigation that there was no person with the name of Mr. Nathu Ram. According to the article published in Amar Ujala newspaper on 13<sup>th</sup> March, 2013, 25 Saal trees were illegally cut in the reserved forest of Rajpur Forest Division. The land admeasuring 9 bighas was got registered in the name of Mr. B.S Sidhu by purchasing the same for about 1.5 crores. The market value of the land is estimated to be 20 crores. It is also reported in the said newspaper that even after 12 days of the aforesaid disclosure, no steps had been taken by the Government.

**6.** The Second Original Application (384 of 2015) has been filed by Mr. B.S. Sidhu (Respondent No. 4 in O.A. 309 of 2013). He has averred that he is filing the application under Section 18 read with Section 15 which raises a substantial question regarding violation of the enactment specified in the Schedule, particularly the provisions of Forest (Conservation) Act, 1980, by land mafias and builders in connivance with forest officials, particularly respondent no. 7 to 10 herein, who had been posted in Mussoorie Forest Division of District Dehradun. Further it is stated that the forest officials who are the guardians of the forest have failed to discharge their duties in preventing illegal felling of trees and have instead colluded with land mafias and builders resulting in large scale felling of trees in the Mussoorie Forest Division of District Dehradun. Further it is stated that 25 Saal trees had been felled in the month of March 2013, in Khasra no. 1 Ka in Virgirwali, Dehradun. Respondent no. 6 proclaims himself to be a Forest Contractor but he is private individual who has been involved in rampant illegal felling of trees in Dehradun, in collusion and connivance with the Forest officials and land mafias.

**7.** It is has also been averred that Respondent No. 7 to 10 were posted in Mussoorie Forest Division and though they

are supposed to be guardians of trees in forest, there are several cases against them for having abetted and participated in the illegal felling of trees. In respect of some cases they had turned their blind eye or have compounded them by imposing negligible/ petty fines which was a bonanza to the builders and land mafias. They helped them to convert the forest into abadi sites.

**8.** Mr. B.S. Sidhu has further averred in his Application that after relying on the revenue record he had bonafidely purchased, through a sale deed dated 20.11.2012, half undivided share of one Mr. Nathu Ram in land bearing Khasra No. 1 Ka with an area of 0.7450 hectares, situated in village Virgirwali, Pargna Pachwa Doon, Tehsil Sadar, District Dehradun. Further it stated that since the applicant had no malafide intention of felling trees, in the sale deed executed in his favour it was mentioned that there were 250 trees existing over the property, though no tree was shown to be existing in the Khatauni. It is also said that he had paid stamp duty not only for sale consideration of the property but also in respect of trees, as per the circle rates prescribed by the Collector Dehradun.

**9.** It is also averred by the applicant that the name of Nathu Ram alongwith Mr. Satyapal and others, was recorded as Bhumidhar, with transferable rights of the aforesaid land,

in the revenue record maintained by the Government since last several decades. Further, it has been stated that the revenue authorities had also mutated the name of the applicant in their records as bhumidhar with transferable rights.

**10.** In the original application filed by Mr. B.S. Sidhu, following prayers have been made:

1. To pass an order directing respondent no. 1 and 2 to take appropriate legal action against the persons responsible for illicit felling of trees in District Dehradun, particularly in Mussoorie Forest Division and for its abetment.
2. Pass an order directing the authorities to take steps to restore the ecology by developing forests in the area where the illicit felling of trees have taken place.
3. To issue directions for realizing appropriate compensation from respondent no. 3 to 10, who have been responsible for illicit felling of trees in Mussoorie Forest Division in District Dehradun and its abetment by illegally compounding the trees for petty amount.

**11.** The **proceedings before the Tribunal in the Original Application filed by National Green Tribunal Association commenced on 24.10.2013** by issuance of notice to the respondents. Further, it was ordered that

respondents be restrained from felling any trees without having obtained permission from the competent authority, under law in force. On service having been affected, respondents appeared through their Counsels and sought time to file replies. After seeking some more time, at later stage, all the respondents filed their replies. Subsequently, on 25.02.2014, the Learned Counsels for respective parties had made submissions and cross allegations against each other.

- 12.** It was observed by Tribunal that it is an undisputed fact that *Saal* trees have been cut without permission from any competent authority and, therefore, the primary question is as to who had cut them.

Further, it was made clear by the Tribunal that it was not concerned with any allied crime that might have been committed by either of the parties but its primary concern is about disturbing the environment and ecology of area by illegally cutting trees and what amount of compensation needs to be ordered or other direction needs to be passed to restore the environment and ecology of that area.

Another question which came up before the Tribunal was that the land in question is a reserved forest and could not be put for any non-forest activity nor could

it be transferred without due permission from Central / State Government.

- 13.** It was on 08.05.2014 that the Learned Counsel for the Applicant as well as State had submitted that the entire land in question is a reserve forest area and presently the same has been mutated in the name of Forest Department. However, such a position was not admitted before the Tribunal by Respondent No. 4 and claimed that he is the rightful owner of the property by registered sale deed.

Looking to the nature of controversy and its seriousness the Tribunal directed the Chief Secretary of the State of Uttarakhand to file a personal affidavit, particularly keeping in view the high position of respondent No. 4. The affidavit filed in pursuance thereof disclosed facts which were of very serious consequence and it was also observed by the Tribunal that they are an *eye opener* to show that the law in relation to preservation of forest area having been given a complete go by and non-forest activities are being carried, on such lands.

- 14.** Thereafter, on 20.07.2014, the Learned Counsel for respondent No. 4 submitted that before Tribunal exercises its jurisdiction under NGT Act 2010, the present proceedings should be stayed because criminal charges are pending before a court of competent jurisdiction, wherein

according to the State, Respondent No. 4 had unauthorisedly cut twenty five (25) trees from the forest area and got illegal sale deed executed in respect of such land. Respondent No. 4 has also lodged an FIR alleging that the Forest Officer had cut the trees from forest area. The Tribunal had observed that trees have been unauthorisedly cut from the forest area and as such the provision of Section 15 from the NGT Act are attracted.

But the Learned Counsel appearing for respondent No. 4 submitted that a preliminary issue be decided as to whether further proceedings before the Tribunal are to be stayed or not. After hearing the parties on the issue the Tribunal, by its detailed order dated 24.09.2014, rejected the prayer of respondent No. 4 to stay further proceedings in the instant case till the disposal of criminal proceedings.

- 15.** Subsequently, it was observed that the only question which is to be determined as to what should be the directions for the afforestation and extent of compensation to be paid on account of the damage caused to the environment and the ecology of the area by illegally cutting and removing of trees.

It was also ordered that the parties should file affidavits by way of evidence, with advance copies to the other side. On 03.03.2015 the Learned Counsel for the

Applicant filed an application. However, though the concerning witnesses were also present before the Tribunal they could not be examined, as adjournment was sought on behalf of respondent No. 4. One last opportunity was granted to the said Respondent to cross examine the witnesses on the next date, subject to payment of cost of Rs. 1500/- to each witness.

**16.** The statements of Ritwik Dutta (PW-1), Virendra Dutta Joshi (PW-2) and Nirvikar (PW-3) were recorded on 09.04.2015. There were two other witnesses namely Kuldeep Negi and Swatantra Kumar, present on that day but their statement could not be recorded. Therefore, the said witnesses were bound down for the next date of hearing. The statement of Kuldeep Singh Negi (PW-4) and Swatantra Kumar (PW-5) were recorded on the next date of hearing. Mr. Chetan Agrawal (PW-6) had appeared before the Tribunal and he was cross examined. Thereafter, the Learned Counsel for the Applicant had declared closer of evidence of the Applicant.

**17.** On behalf of the respondent the statement of Naseem (RW-1/A) was recorded. The said witness was directed to file a complete statement of the trees and which has been felled, in various parts of district Dehradun including Mussoorie and whether such trees were cut with the permission of the

Forest Department, If so, details thereof and the value of such trees which had been cut in the last one year. Such statements were to be filed within one week and the witnesses were to remain present on the next date of hearing.

**18.** It was also observed by the Tribunal, from the statement of the said witness, that Kuldeep Negi and Saklani were the contractors who used to get work done for him, like felling and cutting of trees. Therefore, notices to show cause were issued to these two persons which were to be served through the State Government. The said notice was as to why the Tribunal should not direct appropriate action to be taken against them as well as for payment of compensation for degradation and restitution of the environment and ecology of the area.

**19.** Right to rebuttal of Respondent No. 4 was kept open vide order dated 06.08.2015 with liberty to file application at proper stage. On that day replies to the show cause notice issued by the Tribunal on 21.07.2015 were filed by Naseen, Kuldeep Singh Negi and Prasar Saklani and the same were taken on record. Liberty was granted to the Counsel appearing for the applicant and the State to file response to the same.

The cross examination of RW-4 was continued by the Counsel appearing for respondent No. 2 and 3. On the next date of hearing Pradeep Pant, SHO, Tehsil Chakrata was examined as a witness (RW 4/3) and was also cross examined.

**20.** Later, on 15.10.2015 it was brought to the notice of the Tribunal that an Original Application no. 384/2015 has been filed by Shri B.S. Sidhu (Respondent No. 4) and a request was made for clubbing the two cases.

Shri Yadvendra Singh (RW 4/4) appeared as a witness and he was cross examined. Thereafter, Shri Vishal Bhatiya (RW 4/5) was examined and the Counsel for respondent had cross examined him. On 21.01.2016 Shri Rakesh Rawat (RW 4/6), Inspector CID Dehradun appeared as a witness and he was cross examined. Shri Ravi Kumar Saini (RW 4/7) who appeared as a witness for the respondent and was also cross examined. The statement of Unalal Sharma (RW 4/8) was also recorded and he was cross examined by the opposite party. The Statements of Pramod Singh Pawar (RW 4/9) and Chandrashekar (RW 4/10) were recorded on 02.05.2016. They were cross examined by the Counsel for Applicant. Similarly, the statement of Yogesh Tripathi (RW 4/11) and Ms. Gauri Molukhi (RW 4/12) were recorded on

03.05.2016 and they were also cross examined by the other side.

The statement of Dr. Dheeraj Pandey (RW 3/1), District Forest Officer, Mussoorie was recorded and his cross examination was completed on the next date i.e. 30.08.2016.

**21.** On 19.09.2016, in the light of the order dated 06.08.2015, respondent No. 4 was allowed to be examined for the purpose of rebutting the documents which had been produced by Respondent no. 2 and 3. However, it was observed that it is obligatory on the part of the applicant and respondent No. 4 to examine/cross examine the witnesses only in relation to the documents. At the request of respondent No. 4 the Tribunal ordered that as both the cases have already been clubbed, the evidence so recorded be considered as common to both namely in O.A. No. 309/2013 and O.A. No. 384/2015. Thereafter, on 18.05.2017, respondent No. 4 was examined and was cross examined in rebuttal. The Learned Counsel then submitted that evidence in rebuttal be concluded. The recording of evidence in both the cases was closed / completed on 21.07.2017. Ultimately the matter was taken up for hearing on 23.03.2018 and the same was concluded on 16.04.2018.

**Case of the parties:**

**22.** In the original application filed by NGT Bar Association, reference has been made to sub-section (ii) of section 2 of the Forest (Conservation) Act, 1980, where in no non-forest activities are allowed in forest land without prior permission from the Central Government.

Sub-section (ii) of section 2, Forest (Conservation) Act, 1980 provides that:-

*“2. 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.*

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

However, in the instant case no such permission for cutting of trees, in the reserved forest land falling inside the Mussoorie Forest Division (Rajpur Forest Range) on Dehradun Mussoorie highway was taken either from the State Forest Department or from the Central Government.

**23.** As per Section 2(iii) of Forest (Conservation) Act, 1980, without the permission of the Central Government, the selling of land to a private person is not allowed.

Sub-para (iii) of Section 2 of Forest (Conservation) Act, 1980 provides as under:

*“2. 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:-*

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

But, in the present case Mr. B.S Sidhu,( I.P.S.) in violation of the provision of the Forest (Conservation) Act, 1980, got a sale deed of forest land executed in his favour.

**24. Reply** had been filed on behalf of **Ministry of Environment, Forest & Climate Change (Respondent no. 1)** through its, Assistant Inspector General of Forest. It has been submitted that the application concerns about encroachment and illegal sale of forest land in the State of Uttarakhand. Further, it has been submitted that the subject matter essentially pertains to the Government of Uttarakhand. However, it has been submitted that the case related to an attempt by certain persons to commit fraud and sell reserve forest land in which there is a purported involvement of the Senior Police Officer. The Ministry had requested the Chief Secretary, Government of Uttarakhand

to conduct a detailed investigation in the case and action be taken, as per law against the culprits.

**25.** The **State of Uttarakhand, respondent no.2** has filed its **counter affidavit** to the original application, through its Chief Secretary. It is said in the affidavit that the same is being filed with the intention to bring correct facts of the case before the Tribunal. It is deposed that vide notification dated 22<sup>nd</sup> February, 1968, the land of village Dhakpatti, plot no. 3/1, measuring 15.23 acres and plot no. 1/1 situated in village Birgirwali measuring 3.86 acres was proposed to be declared as reserved forest. Thereafter vide notification dated 01.05.1970, the aforesaid land was notified as Reserved Forest. It is also mentioned that on 09.03.2013, four trees of Saal (*Shorea robusta*) were illegally felled in the reserve forest area of Rajpur Compartment no.4. The material was seized on the spot by field staff of Mussoorie Forest Division and recovery memo was prepared. Higher authorities were informed immediately and investigation was commenced by the I.O.

**26.** Again on 18.03.2013. twenty one trees of Saal (*Shorea robusta*) were felled in reserve forest area of Rajpur Compartment no.4. The investigation was started in that case also. Further, it is deposed that during course of enquiry it had come to knowledge of the Enquiry Officer

that land was in reserve forest area from which Saal trees were illegally felled, was purchased by Shri B.S Sidhu, respondent no.4 through a registered sale deed which was got executed on 20.11.2012 and the mutation of the land was entered in his name on 13.3.2013.

**27.** The Police Department had also conducted an enquiry in respect of illegal purchase of government land and felling of trees. The report of the same was submitted by the then Director General of Police to Chief Secretary of the State, vide his letter dated 10.04.2013. On 15.05.2013 and 16.05.2013 inquiry reports were submitted by the officer of the Forest Department, with respect to both the incidents, wherein respondent no.4 was held prima facie guilty for illegally felling 25 trees. Subsequently, on 24.06.2013 after completion of enquiry by the Forest Department and on seeking advice from D.G.C (Criminal), two criminal complaints bearing no. 1480 of 2013 and 1481 of 2013 were submitted before the learned Chief Judicial Magistrate, Dehradun, by the competent officer, against respondent no.4 for the offences under Section 26 (f) and 26 (h) of Indian Forest Act, 1927. Cognizance was taken by concerning Magistrate in the said criminal cases which are pending adjudication.

**28.** Mr. B.S Sidhu, respondent no.4 had also lodged an FIR against Dr. Dheeraj Pandey, Divisional Forest Officer, Mussoorie, Shri Prasad Saklani, local Forester and two other persons for offences under Section 420/120-B/166/167/504 IPC and section 26 of the Forest Act. The said report was registered on 09.07.2013 as crime no. 79 of 2013 at Police station, Rajpur, district Dehradun. It was alleged in the report that Dr. Dhiraj Pandey, the Divisional Forest Officer, Mussoorie Forest Division, Shri Prasad Saklani, the local Forester and two other persons namely; Mr. Satish Gupta and Mr. Ved Prakash Mahavar have cut the trees in the land in question, in order to cancel the mutation of the land in the name of respondent no.4 and trying to grab the land so as to derive economic benefits out of it.

**29.** The Divisional Forest Officer, Mussoorie filed a Writ Petition (Criminal) No. 852 of 2013 before the Hon'ble High Court of Uttarakhand at Nainital for quashing of the aforesaid FIR lodged by respondent no.4. The Hon'ble High Court stayed the arrest of Divisional Forest Officer as well as the Forester, vide its order dated 17.7.2013. Similarly two other persons namely; Mr. Satish Gupta and Mr. Ved Prakash Mahavar, who were also named in the report, filed Writ Petition No. 848 of 2013 before the Hon'ble High Court for quashing of the aforesaid FIR.

**30.** The Divisional Forest Officer, Mussoorie, vide his order dated 25.04.2013, had written to the District Magistrate, Dehradun with all documents, to cancel the mutation of the land entered in the name of respondent no.4 with a request to mutate the land in the name of Forest Department as Reserve Forest.

**31.** The Principal Chief Conservator of Forest, Uttarakhand, by his letter dated 15.07.2013 and 18.07.2013 informed that FIR filed by respondent no.4 against the Forest officer is an effort to derail and adversely affect the Forest department's action against him. The SDM (Sadar), Dehradun vide his letter dated 21.09.2013, informed DFO, Mussoorie about entering final mutation of the land in question, in the name of Forest Department, Uttarakhand as a reserved forest.

**32. A counter affidavit** to the original application has also been filed by **DFO, Mussoorie, respondent no.3**. It has been deposed in the affidavit that vide notification dated 22.02.1968, the land of village Dhak patti, plot no. 3/1, measuring 15.23 acres and plot no. 1/1 situated in village Birgirwali measuring 3.86 acres was proposed to be declared as reserved forest. Thereafter vide notification dated 01.05.1970, the aforesaid land was notified as Reserved Forest Land. It is also stated that on 09.03.2013,

four trees of Saal (*Shorea robusta*) were illegally felled in the reserve forest area of Rajpur Compartment no.4. The material was seized on the spot by field staff of Mussoorie Forest Division and recovery memo was prepared. Higher authorities were informed immediately and investigation was commenced by the I.O.

**33.** It is further deposed that on 18.03.2013, twenty one trees of Saal (*Shorea robusta*) were felled in reserve forest area of Rajpur Compartment no.4. The investigation was started in that case also. During course of inquiry it had come to the knowledge of the Enquiry Officer that land in reserve forest area in which Saal trees were illegally felled was purchased by Mr. B.S Sidhu, respondent no.4 through a registered sale deed executed on 20.11.2012 and mutation of the land was entered in his name on 13.3.2013.

It is also deposed that respondent no.4 has illegally purchased the reserve forest land vide registered sale deed dated 20.11.2012 from one Mr. Nathu Ram. During investigation it came to light that concerned person from whom the respondent no.4 has allegedly purchased the reserved forest land had already died on 25.12.1983.

**34.** It has also been submitted that the Police Department had also conducted an enquiry in this case in respect of illegal purchase of government land and felling of trees. A report

of the same was submitted by the then Director General of Police to the Chief Secretary of the State, vide his letter dated 10.04.2013. The Divisional Forest Officer, Mussoorie, vide its order dated 25.04.2013, had written to the District Magistrate, with all documents, to cancel the mutation of the land entered in the name of respondent no.4 with a request to mutate the land in the name of Forest Department as Reserve Forest.

- 35.** On 15.05.2013 and 16.05.2013 inquiry reports with regard to both incident, were submitted by the officer of the Forest Department wherein respondent no.4 was held prima facie guilty for illegally felling 25 trees. Subsequently, on 24.06.2013, on behalf of the Forest Department and after seeking advice from D.G.C (Criminal), two criminal complaints bearing no. 1480 of 2013 and 1481 of 2013 were filed by the Competent Officer before the learned Chief Judicial Magistrate, Dehradun against respondent no.4 for offences under Section 26 (f) and 26 (h) of Indian Forest Act, 1927. Cognizance was taken by the concerning Magistrate in the said criminal case which is said to be pending adjudication. Respondent no.4 had also lodged an FIR against Dr. Dhiraj Pandey, Divisional Forest Officer, Mussoorie, Shri Prasad Saklani, local Forester and two other persons for offences under Section 420/120-B/166/167/504 IPC and section 26 of the Forest Act. The

said report was registered on 09.07.2013 as crime no. 79 of 2013 at Police station, Rajpur, district Dehradun. It was alleged in the report that Dr. Dhiraj Pandey, the Divisional Forest Officer, Mussoorie Forest Division, Shri Prasad Saklani, local Forester and two other persons namely; Mr. Satish Gupta and Mr. Ved Prakash Mahavar have cut the trees in the land in question in order have the mutation of the land cancelled which was in the name of respondent no.4 and trying to grab the land so as to derive economic benefits out of it.

**36.** It is deposed that on a letter of respondent, the Principal Secretary, Forest inquired into the matter and informed the Hon'ble Chief Minister that the aforesaid FIR dated 09.07.2013 appears as a retaliatory measure against DFO, Mussoorie and his subordinate cannot be prosecuted at the instance of respondent no.4 who has been found to have made an attempt to grab the land.

**37.** It is submitted that on 02.09.2013, the Principal Secretary, Forest invited attention of Chief Secretary on the necessity to constitute a special inquiry committee under the Chairmanship of Director General of Police including Principal Chief Conservator of Forest and Secretary Revenue. The Divisional Forest Officer, Mussoorie filed a Writ Petition (Criminal) No. 852 of 2013 before the Hon'ble

High Court of Uttarakhand at Nainital for quashing of the aforesaid FIR lodged by respondent no.4. The Hon'ble High Court stayed the arrest of Divisional Forest Officer as well as the Forester by its order dated 17.7.2013 and the matter is still pending. Similarly two other persons namely; Mr. Satish Gupta and Mr. Ved Prakash Mahavar, named in the said report also filed Writ Petition No. 848 of 2013 before the Hon'ble High Court for quashing of the aforesaid FIR.

**38.** It is deposed that The Principal Chief Conservator of Forest, Uttarakhand, by his letter dated 15.07.2013 and 18.07.2013 informed that FIR filed by respondent no.4 against the Forest officer is an effort to derail and adversely affect the Forest department's action against him. The SDM (Sadar), Dehradun, vide his letter dated 21.09.2013, informed the DFO Mussoorie about final mutation of the land in question in the name of Forest Department as a reserved forest.

**39. Respondent no.4 has filed a counter affidavit** to the Original Application deposing that factual allegations, contentions and averments made by the applicant in the application are emphatically denied, unless expressly admitted hereinafter. Further it has been deposed that the application is false, frivolous, baseless, gross abuse and misuse of judicial process of law. It has been filed with

malafide intention to harass and humiliate the answering respondent who is a bonafide purchaser of the land bearing khasra no. 1 ka situated in village Veer Girwali, Pargana Pachhuadun, Tehsil Sadar, District Dehradun, after paying the settled consideration amount to Shri. Nathu Ram, S/o Shri Mehku Mal R/o Rasoolpur Rohta, District-Sadar, Meerut and also after seeing the revenue records issued by the concerned authority in his favour. He has deposed, therefore, the application is liable to be dismissed.

- 40.** The said respondent has further deposed that the present application is bad in the eyes of law as it has not been filed in accordance with law and hence the same is liable to be dismissed. It has also been deposed that the applicant has no locus standi to file the instant application against the answering respondent and hence the same is liable to be dismissed. It is submitted that on perusal of the application it seems that it has been filed after receiving undated letter from citizens of Dehradun. However, neither the said letter was signed by citizens of Dehradun nor their names have been mentioned in it. Even the so-called citizens of Dehradun have not authorized the applicant to institute the present application. The application is not maintainable as no affidavit, in support of the same has been filed which is a mandatory requirement, as per Code of Civil Procedure, 1908. The Vakalatnama signed by the

applicant is not in accordance with law and hence the application is liable to be dismissed.

**41.** It is deposed that the application has become infructuous and does not survive after coming to know that the said land belongs to the Forest department and was mutated/restored in the name of the department on 21.09.2013. The answering respondent, vide letter dated 07.05.2013 requested the Collector, Dehradun for refund of stamp duty of Rs. 34,07,100/- which was paid by him at the time of executing the sale deed in his favour and as such prayer no. (b) and (c) of the application do not survive. Further it is deposed that so far as prayer (a) of the application is concerned, the investigation is also being conducted by the Government of Uttarakhand against the culprits who were involved in felling and cutting of trees on the said land.

**42.** Respondent has further deposed that the application is barred by time. As per sub section 3 of section 14 of the NGT Act, 2010, the application has to be presented within six months from the date of accrual of cause of action. In the present case, the cause of action arose in the year 2012, whereas the present application has been filed in the month of October, 2013 and hence the application is liable to be dismissed. It has also been deposed that it is only the

Civil Court that has the power to declare the sale deed null and void.

**43.** Further, it is deposed that the application is not maintainable and liable to be dismissed as the respondent had purchased the land bonafidely after verifying the title documents of Sh. Nathu Ram and on completion of all legal formalities. The true facts of the case are that in the month of March, 2012, Sh. Deepak Sharma and Smt. Smita Dixit, R/o Meerut had approached the answering respondent and said that they are willing to sell the land bearing khasra no. 1 ka situated in village Virgirwali, Pargna Pachwa, Dehradun, Tehsil Sadar, District Dehradun and informed that the land belongs to Sh. Nathu Ram, S/o Sh. Mehku Mal, R/o Kashi Ram quarters, Dehradun who is the one of the owner of half share of the said land. Both persons had told the answering respondent that they are known to Sh. Nathu Ram and he was willing to sell the land, through them, to the answering respondent. They had also shown to the respondent the khasra khatoni, issued by the concerned department in the name of Sh. Nathu Ram.

**44.** It has also been deposed that it was in the month of April, 2012 that the said persons came again to the answering respondent and introduced Sh. Nathu Ram who was the owner of the land. After verifying the title of Sh. Nathu

Ram, the answering respondent agreed to purchase the land for sale consideration of Rs. 1,25,00,000/- and requested Sh. Nathu Ram for demarcation of the land as no boundary wall existed on it.

**45.** It was in the month of May, 2012 that Sh. Deepak Sharma and Smt. Smita Dixit had again informed the respondent that Sh. Nathu Ram has filed an application for demarcation of the land in his favour and assured the answering respondent that it will be done by the concerned authorities within a few days. Accordingly, the respondent entered into an agreement of sale on 21.05.2012 which was duly registered and paid a sum of Rs. 10,00,000/- to Sh. Nathu Ram, vide cheque no. 369000 dated 21.05.2012, drawn on Axis Bank.

**46.** The time for executing the sale deed of the land in favour of answering respondent was fixed for 20.08.2012. But the same was extended till 21.11.2012 as there was delay in demarcation process. It was informed by Sh. Deepak Sharma and Smt. Smita Dixit that a joint survey was conducted by the Forest Officers on 05.07.2012, in respect of the land and a notice was issued to general public for filing objections of which time had also expired and only formal orders were to be passed by the SDM. On 21.11.2012, a sale deed was executed in favour of

answering respondent on payment of the settled amount of consideration to Sh. Nathu Ram. The answering respondent, apart from the settled consideration to Sh. Nathu Ram, had also paid a sum of Rs. 34,07,000/- for stamp duty towards the cost of the land as well as of 250 trees standing on the land. The respondent had further paid cost for 55 years old constructed area over the land. Thereafter, the concerning authorities on 13.12.2012 mutated the land in favour of the answering respondent. A joint survey was conducted by the Revenue department and Forest department, Dehradun on 19.05.2012 and 05.07.2012. It is further deposed that the Forest department had neither stated that the land was reserved for forest nor filed any objection within the period of notice. On the contrary, in a reply to the RTI application, the DFO, Mussoorie himself declared that the land belongs to Sh. Nathu Ram S/o Sh. Mehku Mal and is transferable. Further, it is also deposed that at the time of demarcation of the land neither the Revenue authorities nor the citizens of Dehradun had raised any objection that it belongs to the Forest department. At the time of execution of the sale deed, or on mutation of the land in favour of the respondent, no objection was raised or filed to the concerned authorities by citizens of Dehradun. No compensation had been paid by the Forest department to

the owner of the land before purchase of the land by the respondent.

**47.** Further, it has been deposed that the respondent has not cut any Saal Tree which were situated on the boundary of the land purchased by him. On 20th March, 2013, it had come to the knowledge of the respondent that some Saal Tree had fallen down near the boundary wall of the land. Respondent had then immediately called the forest guard Shri Prasad Saklani to enquire from him about the cutting and felling of the trees. As he had refused to come, the respondent called Van Daroga (Shri. Jagmohan Rawat) and enquired from him about the cutting of trees. Shri Jagmohan Rawat informed the respondent that it was only the Divisional Officer, Shri Dheeraj Pandey who can reply in respect of felling of trees. It is also been deposed that Shri Dheeraj Pandey also could not give any satisfactory reply.

**48.** Later on, the Respondent came to know that there was no forest guard posted in the area in question and Sri Saklani was promoted from the rank of Van Daroga but he was neither transferred to another place nor new forest guard was posted in the area. It came to the knowledge of the respondent that Sri Saklani was very close to Shri Dheeraj Pandey and both of them maintained close contacts with the land mafias Shri. Ved Prakash Mahavar and Shri Satish Gupta. The felling of trees took place on 08.03.2013

and 18.03.2013 and no intimation has been given to the respondent about the said incident. On the contrary, Shri Dheeraj Pandey had made a false statement to the media that he had not informed to any of his Senior Officers about the incident. It is further deposed that associate of Shri Dheeraj Pandey, namely, Shri Satish Gupta had renewed his agreement to sell the land on 04.02.2013 i.e, just a month before the felling of trees started and in collusion with the forest staff, had cut the trees in order to grab the land of the respondents. Having come to know about these facts, it has been deposed, that the respondent lodged an FIR against Sri Saklani, Shri Dheeraj Pandey, Shri Ved Prakash Mahavar and Shri Satish Gupta under sections 420/120-B/166/167/504 of Indian Penal Code and under section 26 of the Forest Act. The case was registered as FIR no. 76 of 2013 on 09.07.2013 at police Station Rajpur, District Dehradun against the aforesaid persons who were involved in cutting of the trees. The Police investigation has revealed the names of the labourers and the forest contractor who were used in felling of the trees, by the forest staff.

- 49.** The **issue raised by the Applicant** is pertaining to selling of a reserved forest land. The land admeasuring 9 *bighas* was got registered in the name of Respondent no. 4, Mr. B. S. Sidhu who had bought it for approximately 1.5 Crores.

According to the applicant, the market value of the land is estimated to be 20 Crores. Further, the case of the applicant is that the area in which this land falls, was notified as a Reserved Forest under Section 4 of the Indian Forest Act, 1927 vide notification dated 22<sup>nd</sup> February, 1968. Accordingly, the land was declared as Reserved Forest under Section 20 of the Indian Forest Act, 1927 vide notification dated 01<sup>st</sup> May, 1970. Therefore, the contention of the applicant is that the act of transfer of the land in forest area, without the permission of the Central Government, is in violation of the provision of the Forest (Conservation) Act, 1980.

- 50.** It is also the case of the applicant that there had been felling of trees in Mussoorie Forest Division, near Dehradun Mussoorie Highway. It is said that on 09<sup>th</sup> March, 2013, in the Mussoorie Forest Division, 4 trees were felled illegally. Thereafter, 21 Saal trees were felled in the same area and the timbers were recovered on the spot. It is submitted by the counsel for the applicant that the act of felling of trees in the Reserved Forest area had been done without any permission from the Forest Department or from the Central Government, as required under Forest (Conservation) Act, 1980.

**51.** It has also been submitted on behalf of the applicant that respondent no. 4, Mr. B. S. Sidhu had got executed a fraudulent sale deed with one Sh. Nathu Ram and purchased the land. The mutation of the land was entered in the name of purchaser namely Mr. B. S. Sidhu. The sale deed is said to have been executed in November 2012.

**52.** In **response** to the case of the applicant, the **State of Uttarakhand**, has submitted that vide notification dated 22.02.1968, the land of village Dhakpatti, Plot No. 3/1, measuring 15.23 acres of land and Plot No. 1/1 situated at village Birgirwali measuring 3.86 acres was proposed to be declared as reserved forest. Thereafter, vide notification dated 01<sup>st</sup> May, 2017 the above noted land was notified as a Reserved Forest.

**53.** It is also the case of the respondent State that on 09<sup>th</sup> March, 2013, 4 Saal trees were illegally felled in the Reserved Forest area. The material is said to have been siezed on the spot by field staff of Mussoorie Forest Division and the same was recovered. The higher authorities were informed and the investigation commenced.

**54.** It has also been submitted by the State that again on 18<sup>th</sup> March, 2013, 21 trees of Saal were felled in the Reserved Forest. Investigation in that regard was also started. It is the case of respondent State that land in Reserved Forest

area, from where the Saal trees were felled, was purchased by respondent no. 4 through a sale deed dated 20.11.2012 and the mutation was entered in his name on 13<sup>th</sup> March, 2013.

**55.** The Police Department had also conducted an enquiry in the present case with regard to illegal purchase of land and felling of trees wherein a report was submitted by the then Director General of Police to the Chief Secretary on 10<sup>th</sup> April, 2013. It was on 15<sup>th</sup> May and 16<sup>th</sup> May of the year 2013, that the enquiry officer of the Forest Department had also submitted a report with regard to both the incidents, wherein the Respondent No. 4 was held prima facie guilty of the illegal felling of 25 trees. On 24<sup>th</sup> June, 2013, two criminal complaints (1480/13 and 1481/13) were filed on behalf of the Forest Department with due advice of DGC (Criminal). The two criminal complaints were filed before the Chief Judicial Magistrate, Dehradun against Respondent No. 4 for the offences under Sections 26(f) and 26 (h) of the Indian Forest Act, 1927. The Learned Magistrate thereafter took cognizance on the said complaints and the matter is pending adjudication. It is submitted that it was in the month of September, 2013, finally that the mutation of the land in question had been again entered, as a reserved forest, in name of Forest Department, Uttarakhand.

**56.** It has been submitted on behalf of the Forest Department, Respondent No. 3, by reiterating the submission made by the State Government in respect of issuance of notification for declaration as a Reserved Forest. It has also been submitted with regard to felling of 4 plus 21 trees of Saal. The material was seized on the spot by the field staff and immediately higher authorities were informed. After commencement of investigation by the IO of Forest Department, evidence like map, google earth image, photographs etc. were collected which showed the illegal felling of trees.

**57.** It is also the case of the Forest Department, that the enquiry revealed that the land is in reserved forest area, wherein trees were felled, was purchased by Respondent No. 4 through the sale deed dated 20<sup>th</sup> November, 2012 and the mutation was also got done in his name on 13<sup>th</sup> March, 2013. The said land (Reserved Forest) was purchased by Respondent No. 4 from one Mr. Nathu Ram s/o Mr. Mahkumal. It is also the case of the Forest Department that during the course of investigation conducted by them, it came to be known that Mr. Nathu Ram s/o Mr. Mahkumal had already died on 25<sup>th</sup> December, 1983. The Department had also annexed R-3/2, which is the death certificate of Nathu Ram.

**58.** According to the Forest Department, District Forest Officer Mussoorie had written a letter on 25<sup>th</sup> April, 2013 to the District Magistrate, Dehradun and a copy was sent to SDM (Sadar) Dehradun to cancel the mutation which had been done in the name of Respondent No. 4. A request was also made to mutate the land in the name of forest department as a Forest Reserve.

The investigation officer of the Forest Department submitted the enquiry reports on 15<sup>th</sup> May, 2013 and 16<sup>th</sup> May, 2013 wherein Respondent No. 4 was prima facie held guilty. Subsequently, two criminal complaints were filed before the Chief Judicial Magistrate Dehradun against Respondent No. 4 and the proceedings are pending.

**59.** It is also submitted by Forest Department, that Mr. B.S. Sidhu, Respondent No. 4 had also lodged a report against the Divisional Forest Officer, Mussoorie and other persons at Police Station, Rajpur (No. 17/2013). It is submitted that being aggrieved of the report against him, DFO had written a letter on 11.07.2013, to the Principal Secretary, Forest. The Principal Secretary, Forest enquired into the matter and informed the Chief Minister that the said FIR dated 9<sup>th</sup> July, 2013 appears to be a reiterately measure against Divisional Forest Officer, Mussoorie and his subordinates. Further, he is said to have written that the DFO and his

subordinate are not to be prosecuted at the instance of Respondent No. 4 who has been found to make an attempt to grab the land.

**60.** Further the case of respondent, Forest Department is that in the month of September, 2013, the Principal Secretary, Forest requested the Chief Secretary to constitute a Special Enquiry Committee under Chairmanship of Director General of Police, Principal Chief Conservator and Secretary Revenue. The DFO, Mussoorie had also approached the High Court at Nainital and the order of arrest against him was stayed on 17.07.2013. Other persons had also approached the High Court.

**61.** On behalf of **Ministry of Environment and Forest**, (Respondent No. 1) it was **submitted**, at the outset, that they deny the allegation and contentions raised in the Application, as regard encroachment and illegal sale of Forest land is concerned. It was submitted that it is essentially a matter pertaining to Government of Uttarakhand. Further, it is the case of Ministry of Environment that the instant case is the one where attempt has been made by certain persons to commit fraud and sell Reserved Forest land wherein a Senior Police Officer is involved. Therefore, the Ministry of Environment had requested the Chief Secretary of the State to conduct a

detailed investigation of the case and action be taken against the culprits, as per law.

**62.** It has been **contended on behalf of Respondent No. 4** that the instant Application is false, frivolous and a gross abuse of process of law. Further, it is submitted that the Application has been filed with malafide intention to harass and humiliate him. It is submitted that Respondent No. 4 is a bonafide purchaser of the land after paying the settled consideration amount to Mr. Nathu Ram s/o of Mahkumal. It is also the case of Respondent No. 4 that he had also looked into the relevant record issued by the concerning authority in his favour. It is further the case of Respondent No. 4 that the present Application is bad in the eyes of law as it has not been filed in accordance to it. Further that the Applicant has no *locus standi* to file the instant Application and hence is liable to be dismissed.

**63.** A question is being raised with regard to a letter received from citizens of Dehradun and the same has not been signed by anyone. It is also said that the Application is not maintainable for the reason that no affidavit in support of it has been filed. Similarly, the Vakalatnama of the Applicant is not in accordance with law.

**64.** It is also been submitted by Respondent No. 4 that the land has now been mutated in the name of the Forest Department. The Applicant had also requested the Collector to refund the stamp duty which was paid at the time of executing the sale deed. According to the Respondent, the investigation was also being conducted by the Government of Uttarakhand as to who are the culprits. Therefore, this Application is not maintainable. The issue with regard to limitation has also been raised on the basis that the cause of action arose in the year 2012. According to Respondent No. 4, he had purchased the land in question bonafide and after verifying the title documents of Mr. Nathu Ram and after completion of all legal formalities. The Respondent No. 4 has also submitted that he has not cut any Saal trees situated near the boundary wall of the land purchased by him. According to Respondent No. 4, he had himself enquired into the illegal felling of trees near the land purchased by him, but he could not get any satisfactory reply. On having come to know of the facts about the case, it is said that Respondent No. 4 himself lodged a report against the officer/employees, of Forest Department on 9<sup>th</sup> July, 2013 at Police Station, Rajpur. According to him, it is revealed by police investigation that it was the labourers and the forest Contractors who had felled the trees.

**65.** Now the question which arises for consideration is that:

- (i) the land in question being a reserved forest could not have been put for any non-forest activity nor could it had been transferred without due permission from Central / State Government.
- (ii) who is responsible for cutting of *Saal* trees without permission of any competent authority.
- (ii) Consequent to it, the concern of the tribunal is about damage done to the environment and ecology of the area by illegally cutting of trees and as to what compensation or other direction need to be passed to restore the environment and ecology of that area.

**66. By the Court :**

After considering the case of the parties and the material on record, the sequence of events which emerges are that, Respondent No. 4 Mr. B.S Sidhu, the then DGP prosecution, had purchased a land near old Mussoorie road by a registered sale deed dated 20.11.2012 and paid Rs. 60 Lakhs to Nathu Ram. 21 + 4 Saal trees were cut from the said land on 09.03.2013 and 18.03.2013 respectively.

**67.** At the outset, it may be mentioned that under the Gazette notification No. 23(2) -94 (XIV)-B 67 dated 22.02.1968 and notification no. 6789/54-KH-20(382)-69 dated 01.05.1970, the above noted land was notified as a Reserve Forest.

**68.** In this case, firstly the Forest Department had started enquiry / investigation and referred the matter to District administration. The Learned Government Counsel had thereafter, advised that in this matter there is a violation of Forest Act. It was also stated that Mr. B.S Sidhu was prima-facie responsible for illegal purchase of land in reserve forest and also for violation of law for cutting 25 saal trees from such forests at Rajpur compartment No. 4.

**69.** On receiving the opinion of Government Counsel the Forest Department had, on 24.06.2013, filed two criminal cases no. 1480/2013 and 148/2013 before the Learned Chief Judicial Magistrate Dehradun regarding illegal felling of trees in reserve forest area. The Learned Chief Judicial Magistrate by his order dated 26.06.2013 took cognizance against Mr. B.S. Sidhu. He had thereafter, filed two Revision Petitions (174/2013 and 170/2013) before the Learned Additional Session Judge Dehradun against the aforesaid orders of cognizance passed by the Learned Chief Judicial Magistrate. Subsequently, vide order dated 13.07.2016 the Learned Additional Session Judge had set aside the order of summoning, dated 26.06.2013 with the directions that fresh summon be issued to the accused Respondent No. 4, in accordance with law.

The Learned Chief Judicial Magistrate Dehradun had, in complaint cases no. 1480/2013 and 148/2013,

again taken cognizance on 09.12.2016 and directed for issuance of fresh notices to the accused for his appearance before the court on 27.01.2017. Mr. B.S. Sidhu had then filed two Miscellaneous Applications under section 482 Cr.P.C. before the Hon'ble High Court of Uttarakhand (80/17 and 81/17) against the impugned order passed by Chief Judicial Magistrate on 19.12.2016 for appearance of the accused. Those applications are still pending.

**70.** Meanwhile, Mr. B.S. Sidhu, the then DGP prosecution, had on 09.07.2013 lodged an FIR (79/2013) at Rajpur police station, Dehradun against Dr. Dheeraj Pandey, District Forest Officer Mussoori, Shri Prasad Saklani, local forester and two other persons.

**71.** The District Forest Officer Mussoorie had on 25.04.2013, requested the District Magistrate Dehradun, along with the copy of the SDM (Sadar) to cancel the mutation entered in favour of Mr. B.S Sidhu and submitted all the evidences including notifications regarding Reserve Forest Act under sections 4 and 20, with the request to enter the same in the name of Forest Department. The Learned Sub-Divisional Magistrate, Sadar, Dehradun cancelled the mutation which was in the name of Respondent No. 4. And in September 2013 entered it as reserve forest in the name of Forest Department.

**72.** The Revenue Department had also initiated an enquiry by the order of Shri Bhaskaranand Joshi, the Revenue Secretary and asked Shri Subaradhan, Commissioner Garhwal Division to conduct an enquiry and submit a report to the Government. The Commissioner had submitted his report to the Secretary Revenue. According to him the land was wrongly mutated in the name of Respondent No. 4 and the status of the land is that of reserve forest.

**73.** The District Magistrate Dehradun had also conducted an enquiry in the matter and submitted a report to the Chief Secretary on 22.04.2016. According to the report the sale and purchase of reserve forest land was fraudulent in nature and the FIR filed against the District Forest Officer Mussoorie and his subordinate staff, appears to be a step in retaliation. The Learned Sub-Divisional Magistrate Dehradun had also dismissed the proceedings for demarcation, in suit no. 45/2011-12 Nathu Ram Vs. Yashpal and Ors. which was filed on 26.10.2012.

**74.** Mr. Satyabart, the then DGP Uttarakhand had also submitted a report on 10.04.2013 to Shri Subhash Kumar, the Chief Secretary Uttarakhand. It was mentioned in the report that the matter was a serious one whereby an offence has been committed. He had also expressed an

apprehension that those involved in this illegal act may try to file false cases against others, so as to save themselves.

**75.** The Principal Secretary (Forest) had on 11.07.2013 put a noting in the file that a case has been filed against Mr. B.S. Sidhu, DGP, for cutting of trees in forest land on old Mussoorie road. Further, it is mentioned that the said land had been sold and registered in his name. He observed that it appears to be a matter of land grabbing for which a case under Forest Act has been filed in the court. It is also stated that if senior officers misuse the provision of law against government servants, who are doing their duty, it reflects poorly on the image of the State Government. Such action would also demoralise the entire forest staff.

**76.** The Chief Secretary Uttarakhand has also filed an affidavit before the Tribunal stating that Respondent No. 4 has illegally purchased a land in Reserve Forest and had fell trees in the area. He has also deposed that the respondent is misusing his position. The Hon'ble Governor of Uttarakhand had also asked the Government on 02.05.2014 to conduct an independent enquiry in the matter. The Department of Home, Government of Uttarakhand has served a charge sheet to Mr. B.S. Sidhu for illegal purchase of reserve forest land and cutting of

Saal trees. The said matter is under consideration of the Government.

**77.** The Principal Chief Conservator of Forest Uttarakhand had on 15.07.2013 intimated the then DGP Uttarakhand with regard to the instant case wherein it was mentioned that lodging of first information against District Forest officers and others is an effort on the part of the Respondent No. 4 to derail and adversely affect the action of the department from legally proceedings against him. The Principal Chief Conservator of Forest had also on 18.07.2013 intimated the Chief Secretary of Uttarakhand about the case against Respondent No. 4 and the first information report lodged against DFO and forest officers while they were doing work in discharge of their official duty. He urged that immediate steps be taken so that victimization of the forest official does not happen.

**78.** The departmental charge sheet had been served to Respondent no. 4 Mr. B.S. Sidhu on 29.04.2016 which was based on preliminary enquiry conducted by **high level committee** consisting of Principal Secretary (Home), Principal Secretary (Personal) and Principal Secretary (Law). According to the preliminary enquiry report respondent was held prima-facie guilty of misconduct, misbehaviour and

misuse of his official duty. The reply filed by Respondent No. 4 was found unsatisfactory by the said committee.

**79.** Another Original Application, No. 384/2015, before us has been filed by Mr. B.S. Sidhu who is also Respondent No. 4 in the above mentioned O.A. (309/2013). It relates to the same case as filed in earlier Original Application by NGT Bar Association Vs. Union of India (309/2013). It is to be noted that the Original Application filed by Mr. B.S. Sidhu is after nearly two and a half years whereas it was well known to him about the Original Application filed by NGT Bar Association wherein he was a party respondent. The Original Application filed by Mr. B.S. Sidhu is also against the Forest Officer of Mussoorie Forest Division. In the facts and circumstances of this case, while filing his affidavit for Uttarakhand (R-2) the Chief Secretary of Uttarakhand had reiterated that the contents of the affidavit filed by him in the earlier Original Application may kindly be read as part of this affidavit.

**80.** At the cost of repetition it may be mentioned that on 09.03.2013 four Saal trees (Shorea robusta) were illegally felled in the reserve forest area of Rajpur compartment no. 4. The material was seized on the spot by the staff of the forest division and recovery memos were prepared immediately. Thereafter the higher authorities were

informed. The investigation was started by the investigation officer on 14.03.2013. Again on 18.03.2013 twenty one Saal trees were felled in the same reserve forest area. The investigation commenced as per law and recovery memos were prepared. The field inspection was done by Forest Officers including the Divisional Forest Officer, Sub-Divisional Forest Officer Mussoorie, Conservator of Forest Yamuna circle Conservator of Forest Gharwal. The senior officers including PCCF Uttarakhand and Chief Conservator of Forest Gharwal were immediately informed by the Divisional forest officer Mussoorie.

- 81.** The investigation officer had recorded the statement of witnesses during the course of enquiry and it came to his knowledge that the reserve forest area from which Saal trees were illegally felled was purchased by Mr. B.S. Sidhu, through a sale deed dated 20.11.2012. The mutation of the land was entered in his favour on 13.03.2013. On conclusion of the enquiry the reports were submitted on 15.05.2013 and 16.05.2013 to the higher authorities regarding the incidence of illegal felling of trees on 09.03.2013 and 18.03.2013. In the said report Mr. B.S. Sidhu was prima-facie found guilty of illegally purchasing the Reserve forest land and subsequent felling of twenty five Saal trees in the area. The said purchase was through registered sale deed dated 20.11.2012 from Nathu Ram S/o

late Shri Makhumal, resident of Dehradun who was at that time residing in district Meerut. It had also come to light, during the investigation, that the seller Makhumal had already died on 25.12.1983.

Shri Nasir Ahmed Lekhpal had accompanied Shri Subarthan, the Commissioner Garhwal in the field inspection of the area on 07.05.2013. An enquiry report in this matter was submitted by the then Commissioner Garhwal to the Secretary Revenue Government of Uttarakhand on 17.05.2013. According to Section 34 of LR Act there was an old Sal forest on the land Khasra No. 1(Ka) and also around the said khasra. The Learned Divisional Commissioner had clearly mentioned in the report that the land in question is a Reserve forest land.

The site map of Rajpur reserve forest compartment no. (4), downloaded through Google Earth, clearly shows that the land in question is a thick Saal forest which comes under the Reserve Forest Area. On completion of enquiry on 24.06.2013 by the Forest department two criminal complaints no. 1480/2013 and 1481/2013 were filed before the Learned Chief Judicial Magistrate Dehradun against Mr. B.S. Sidhu for offences punishable under Section 26 (f) and 26(h) of the Indian Forest Act 1927, after seeking the advice from the DGC (Criminal). On 26.06.2013 the Learned Magistrate took cognizance of

the complaint and order for appearance of Shri B.S. Sidhu in the court on 04.08.2013.

**82.** Mr. B.S. Sidhu had also filed an FIR on 09.07.2013 against the Division Forest Officer, local forester and two other persons for the offence under Section 420/120-B/166/167/504 of IPC and Section 26 of the Forest Act. The said report was registered as no. 79/2013 at Police station Rajpur, District Dehradun. It was alleged in the report that the accused named therein have cut the trees in the land in question in order to cancel the mutation which was in the name of Mr. B.S. Sidhu and were trying to grab the land for deriving economic benefits.

**83.** The District Forest Officer approached the High Court of Uttarakhand at Nainital by filing Writ Petition Criminal No. 852/2013. The Hon'ble High Court stayed the arrest of the DFO and Forester vide its order dated 17.07.2013 and directed the Government to file counter affidavit within three weeks. The other two persons named in the report Satish Gupta and Ved Prakash also approached the Hon'ble High Court for getting the FIR quashed by filing Writ Petition No. 848/2013. After considering the facts and circumstances the Hon'ble High Court had also stayed the arrest of those petitioners and directed the Government to file the counter affidavit indicating that why the

investigation should not be transferred to a Special Investigation team headed by the police officer senior to Mr. B.S. Sidhu. Subsequently, on 06.09.2013 the High Court had again directed the Government to constitute SIT and to hand over the investigation to it for fair and unbiased investigation.

- 84.** A charge sheet was filed by the police against the respondents no. 7, 8, 9 and 10 (O.A. No. 384/2015) in the court of Judicial Magistrate Dehradun. Thereafter, the respondent approached the High Court against the said charge sheet and obtained an order on 02.07.2014 for stay of the proceedings of the lower court.
- 85.** In the charge sheet filed by the police there were two main witnesses namely Akbar and Nasrin. They had deposed under Section 164 Cr.P.C that the trees were already cut and the forest officials merely asked them to make Log and deposit them in the forest chowki at Malsi and subsequently mentioned that it is a Government property.
- 86.** In the investigation conducted by Virendra Dutta Joshi, on behalf of the Forest Department, it was revealed that Mr. B.S. Sidhu had called the local forester (1) Daroga Mr. Jagmohan Rawat to his residence for enquiring about land (page no. 120 of O.A. No. 309/2013). Similarly from two enquiry reports of case no. 15 of Raipur / 2012-2013 and

case no. 16 of Raipur / 2012-2013 it is clear that Mr. Jagmohan Rawat had told Mr. B.S. Sidhu that the land falls under Raipur reserve forest compartment no. 4 and belongs to the Forest Department. The investigation officer Virendra Dutta Joshi in his affidavit for evidence (Exhibit PW 2/1) at page no. 3 para (11) as well as the cross examination (page 6) has categorically deposed that Mr. B.S. Sidhu knew about the status of land before purchasing. These facts have been corroborated in the additional affidavit filed by Respondent NO. 3 the Divisional Forest Officer Mussoorie (page 1732-1741). They have also filed the copy of gate entry register of Kishanpur Police Officer Colony, Dehradun, which was obtained in RTI, reveals that Jagmohan Rawat was called by Mr. B.S. Sidhu on 19.04.2012 at his official residence where he had given the aforesaid information with regard to the status of land in question. It was after a month later that Mr. B.S. Sidhu had entered into an agreement of sale of the land with Mr. Nathu Ram on 21.05.2012 and had paid an advance of Rs. 10 lakhs to him. The fact that B.S. Sidhu was residing in Kishanpur Police Officers Colony is clearly established from his rebuttal evidence, given on 18.05.2017, where he has stated that :

“I was residing at, Police Officers Colony, Kishanpur, Dehradun during my tenure as DGP”.

**87.** Furthermore, Mr. B.S. Sidhu had in his letter to District Magistrate Dehradun (Annexure R4/1) along with his affidavit filed in the Tribunal stated that Shri Deepak Sharma and Ms. Sunita Dixit, both residents of Meerut, had met him in Dehradun in March, April and May of the year 2012 and convinced him about buying the land in question. It has been further mentioned in para 2 of the letter that “subsequently all of them took him to old Mussoorie road to show the location of the aforesaid property.” This clearly established that Mr. B.S. Sidhu had enquired about the land from the local Forester after calling him to his residence who had informed him about the status of land as reserve forest. Furthermore, in his rebuttal evidence tendered on 18.05.2017 Mr. B.S. Sidhu stated that :

“I have met Mr. Sharma and Ms. Dixit regarding the sale of the land in question by a person known to them, namely Nathu Ram. The aforesaid two people brought the proposal of the land which I accepted. Finally, I bought the land on my own volition after due verification.”

Therefore, it is crystal clear that Mr. B.S. Sidhu had purchased the land in question despite knowing the fact that it was a land of Reserve Forest.

**88.** In the sale deed dated 20.11.2012 (page 57) it is mentioned that the land in question was in possession of Mr. B.S. Sidhu since 21.05.2012, the date of the agreement. Even he has mentioned during his examination in chief on 03.09.2015 that :

“I have read and understood the contents of the agreement to sell, as well as the sale deed.”

**89.** In the report submitted by **District Magistrate Dehradun** to the Chief Secretary on 22.04.2016, it has been **mentioned** that the sale and purchase of reserve forest land is fraudulent in nature and the first information report filed against the District Forest Officer Mussoorie, Dr Dheeraj Pandey, and his subordinate staff appears to be a step taken in retaliation to protect the informant from prosecution.

**90.** The learned District Magistrate Dehradun has further held that :

*“.....From the aforesaid discussion, there does not appear to be any purpose for the following acts done by the purchaser Mr. B.S. Sidhu in the purchase of land in question.*

*1. It has been accepted in the aforesaid application made before the District Magistrate, Dehradun by the purchaser for the refund of the stamp duty that he had made RTI application*

- for finding out the position of the said land w.r.t. being a forest land. In reply to the said application, a letter was written by the Forest Department to find out information on the basis of Khasra Nos. The Revenue Department is to be contacted. The proceedings of the demarcation was rejected by the revenue department which should have been in his knowledge, despite this the land was purchased by him ( Mr. B.S. Sidhu) and the sale deed was executed on 20.11.2012.*
- 2. Before the purchase of the said land, the number of trees and their value may not be known to the seller, because there was no demarcation done on the said land. But still 250 nos. of trees were entered on the sale deed at the time of the registration.*
  - 3. After the mutation proceedings, the mutation case was allowed by the court of Addl. Tehsildar, Dehradun in absolute hurried manner.*
  - 4. The reason of filing FIR against the DFO Mussoorie and subordinate may be a counterblast to protect himself in the case, which can be further investigated by the independent police agency.*
  - 5. According to the details available, even after having full information that the land purchased by him is a Reserve Forest Land and a Government property, Mr. B.S Sidhu has not initiated any legal proceedings against the Seller, Mr. Nathuram, till date. It is clear from the aforesaid facts that the Sale/purchase in question isbe doubtful / Suspicious.*

*Since B.S. Sidhu is presently posted as Director General of Police, Uttarakhand, and due to this reason, it is not expected that proper unbiased enquiry by the regular police would be done against its senior official. Therefore, it is appropriate that a high level and independent criminal enquiry be conducted from any independent agency.” (Refer pages 750 to 753 in OA no 384 of 2015)*

**91.** It is pertinent to note here that till date no report has been lodged by Mr. B.S. Sidhu against Nathu Ram, Deepak Sharma and Ms. Smita Dixit for duping him of Rs. 60 lakhs (page 1082-1083). Further in his rebuttal evidence on 18.05.2017 Mr. B.S. Sidhu has stated that :

“I came to know that I have been duped in April 2013. I did not lodge any FIR against anyone. It is correct to suggest that I had purchased the land in question in November 2012. I did not lodge any FIR or any complaint till date against the seller.”

**92.** The **Principal Secretary Forest** had on 11.07.2013 made the noting on his file that :

*“A forest case had been booked against DGP Shri Siddhu over cutting of trees over forest land in Old Mussoorie Road. During investigation, it was found that the forest land had been registered in the name of Shri, Siddhu. It appears as retaliatory measure Shri, Siddhu has filed and FIR against*

*DFO Mussoorie and sub-ordinates. It appears to be a clear cut case of land grabbing for which forest offence H-2 case has been filed in the Court against Shri Sidhu. The cutting of trees, the status of land as forest land, the registration of land in Shri Siddhu's name and the non-existence of seller Shri. Nathu ram are all widely reported in the press. If senior officers misuse provisions of law to settle personal scores and lodge FIR against Government servants doing their duty, it reflects very poorly on the image of the State Government. In this connection a draft of letter being sent to DG Police is kept in file for approval please. Such action will also demoralize the entire Forest staff and they may stop booking such cases to avoid harassment.” (Refer page 253)*

**93.** The **Chief Secretary** Government of Uttarakhand had filed an affidavit before the Tribunal clearly stating that Mr. B.S. Sidhu has illegally purchased the reserve forest land and felled the trees in forest area. It also mentioned that by misusing his position he has registered the first information report No. 79/2013 on 09.07.2013 against several officers of Forest Department including Divisional Forest Officer (Para no. 9 and 12 and pages 314 to 317).

**94.** The **High Court of Uttarakhand** had, on 10.03.2017 in criminal Miscellaneous Petition No. 666/2014 filed by Dr. Dheeraj Pandey under Section 482 CrPC, quashed the

summoning and cognizance order against the then DFO Mussoorie and 3 other Forest Officers, in the charge sheet filed by police in FIR 79/2013. The operative part of the judgment reads as follows:

“Accordingly, all these petitions are allowed. Impugned summoning / cognizance order dated 16.06.2014 passed by Learned Judicial Magistrate – III Dehradun against the Petitioner in criminal case no. 1873 of 2014, State Vs. Sharad Sood under sections 420, 467, 468, 471, 201 and 120 – B IPC read with Section 26 of Indian Forest Act is hereby quashed and set aside”.

**95.** The **departmental charge sheet** was served on Mr. B.S. Sidhu on 29.04.2016 which was passed on to the preliminary enquiry report of high level committee of three members, constituted for this purpose by Government of Uttarakhand and they had found Mr. B.S. Sidhu, prima-facie guilty of misconduct, misbehavior and misuse of his official position as Director General of Police. The reply given by Mr. B.S. Sidhu to the chargesheet was found unsatisfactory by a committee headed by Chief Secretary, Principal Secretary (Home), Principal Secretary (Personal), Principal Secretary (Law) and Additional Secretary (Home) Government of Uttarakhand.

**96.** The Legislature had, for expeditious adjudication of environmental issues including mode of compensation /damages, established the National Green Tribunal. In the statute (NGT Act 2010) it has been declared that :

1. The tribunal shall not be bound by the rules of evidence Section 19 (3).
2. The tribunal shall decide such claims by applying the principles as contained in Section 20 of the NGT Act.
3. Further, the civil courts have been devastated to deal with the matters covered under Section 14, 15 and 16 read with Section 29 of the NGT Act.

**97.** The statements of the witnesses who are examined by the police do not carry any evidentiary value. The veracity of the witnesses is to be tested in the court. A statement given by the witnesses before the police can only be used for the purpose of confronting him during the trial. In this case witnesses had appeared before the Tribunal. A original record was also produced. The witnesses were cross examined before the Tribunal and their evidence was appreciated. Therefore, the testimony of the witnesses before the Tribunal, not only have evidentiary value but it is legal evidence.

It is relevant to mention here about the standard of proof in criminal and civil cases. The standard of proof, in essence, can be loosely defined as the quantum of evidence

that must be presented before a Court before a fact can be said to exist or not exist. As the type of cases before a Court can be classified into criminal or civil, so can the standard of proof. There is a clear understanding that the Courts follow according to which the standard of proof to be followed in a criminal case is that of 'beyond reasonable doubt' whereas the standard of proof changes, even lowers to the 'balance of probabilities' in cases of civil proceedings. Two separate standards of proof are recognized- proof beyond reasonable doubt and proof based on the balance of probabilities. The former is the standard adopted while dealing with criminal cases while the latter is the standard in use in case of civil suits. Different standards of proof are constructed seemingly to, among other things, minimize the high social costs that may arise on account of errors.

The standard used in criminal trial that is proof beyond reasonable doubt is viewed as requiring a high degree of satisfaction that the prosecution must, through the evidence and materials presents. This high degree often leads to acquittal sometimes even when the authority trying the case feels that the guilt of the accused, based on the evidence, is more probable than his innocence.

A lower standard, that of balance or preponderance of probability is applied in civil litigation. Even though the standard of proof is lower in civil cases, it is no reflection on the seriousness of the allegations in question. The rationale

behind the use of such a standard is that in some cases the question of probability or improbability of a happening is an imperative consideration to be taken into account in deciding whether that event has actually taken place or not.

**98.** At the request of the parties permission was given to lead **evidence before the Tribunal.** A number of witnesses were examined in this case. However, the relevant evidence of some of the star witnesses is being noted here.

**Mr. Ritwik Dutta (PW-1)** Secretary NGT had filed an affidavit in evidence (Exhibit PW 1/1). He was cross examined by the other side, in reply of which he had deposed and the relevant extract, is as under:

*“It is correct that Bar Association initiated proceedings on anonymous letter, self-stated that, however, it was brought to our notice that the person was afraid and therefore did not wish to come in the forefront.”*

*“It was widely reported in the newspaper which was source of information.”*

*“It was authorized by the executive committee of NGT Bar Association to file this application with resolution.”*

*“I had documents with me including the newspaper cuttings and letter written, addressed to the Tribunal.”*

*“We had made an enquiry, the matter was widely reported at the internet. With due attention that large number of people were affected and for the reason that high dignitary of the police was involved in this case, after deliberation the Association decided to take up the matter.”*

*“Respondent No. 4 was Director General of Police, Rule and Manual but still he was a DGP.”*

*“I had only seen record which has been annexed to the affidavit of Chief Secretary including revenue records.”*

*“It is incorrect to suggest that affidavit of Chief Secretary is baseless and incorrect. It is incorrect to suggest that I was instrumental in writing the anonymous letter and even pursuing the case to the Government.”*

**Dr. Dheeraj Pandey (RW 3/1)**, Divisional Forest Officer, Mussoorie Forest Division, District Dehradun, Uttarakhand, had filed an affidavit in evidence (Exhibit 3/1 –A). He also filed reply upon documents (Exhibit R-3 W-1/1 to R-3 W 1/23). He was cross examined by the other side, in reply of which he had deposed, the relevant extract, as under:

*“I have seen the site in question for the first time in the month of March, 2013. I have gone to site after felling of the trees.”*

*“I have not given any permission for the chopping of the felled trees into pieces.”*

*“Status report Exhibit RW-3/R 4-X (page Nos. 1273 to 1279) has been submitted by me and is bearing my signature at point “A” thereon. It is correct that page no. 1279 of the said report is a seizure memo which has been prepared by my subordinates. It is correct that another seizure memo had been prepared at the site on 18<sup>th</sup> March, 2013.”*

*“It is correct that Sh. V.D Joshi was appointed as IO.”*

*“It is wrong to suggest that I have filed two criminal cases against respondent no. 4 on the basis of the inquiry report of Sh. V.D Joshi.”*

*“It was in September 2013, when the land in question had been mutated in the name of the Forest Department in the revenue records. It is correct that on my application to the District Magistrate Dehradun, the same had been done.”*

*“It is correct that the same was after felling of the trees. At the time when I made the application to the DM Dehradun the name of respondent no. 4 was entered as Bhomidhar in the revenue records in respect of the land in question.”*

*“I came to know of the contents of Para No’s 24 & 25 of my affidavit on the basis of inquiry reports submitted by the then Commissioner, Garhwal Sh. Subardhan, which is part of an affidavit filed in the instant proceedings.”*

*“It is wrong to suggest that under a criminal conspiracy I am trying to shield Sh. Satish Kumar Gupta, Sh. Shard Shood and others.”*

*“I do not know anybody by the name Nathumal or Nathuram.”*

*“It is incorrect to suggest that till date the Forest Department has not initiated any action against Sh. Satish Kumar Sood, Balraj Sood, and Satish Kumar Gupta. I have referred the case in respect of illegal felling of trees and illegal purchase of reserve forest land against the aforesaid persons along with others to my superior officers for directions for registering appropriate case in the court of law.”*

*“No contract has been given by the office of DFO Mussoorie to any contractor in respect of felling of trees.”*

*“The sub divisional forest officer had made a departmental inquiry in the matter of involvement of the local forest staff in the said felling and the matter was also reported to the Govt. by the PCCF/HOFF.”*

*“No Forest Officers were found to be involved in the subject incidents.”*

*“This land was recorded as Reserve Forest as Rajpur Compartment 4 in the working plan of the Forest Department.”*

*“The concerned range officer during the inspection has clearly mentioned that the area contains Saal trees.”*

*“The environmental loss on account of illicit felling of trees in reserve forest area is considered as per the schedule of rates decided by conservator of forest in this regard, at the time of compounding.”*

*“The Figures at point “ A-6” refers to the different class of diameter of 25 trees and the total measurement of fell trees was 8.330 Cubic meter.”*

*“I have never appeared before the DM in the enquiry proceedings of April 2016 but I have received a letter for supply of certain documents which were being supplied to the Enquiry Officer.”*

*“It is wrong to suggest that the anonymous letter sent to the Tribunal was sent at my behest.”*

*“It is correct that the forest area is classified Moist Shivalik Saal Forest. It is correct that as per the current working plan of the Mussoorie Forest Division, density of the forest cover is approx. 80 %. It is correct that 25 felled trees in question were saal trees. It is correct to say that besides the commercial component i.e. the timber value, the Saal trees are also contribute towards air purification, wild life habitat, ground water recharge, soil conservation and climate change mitigation. It is correct to suggest that the non-commercial component of a Saal tree during its entire life span is much higher when compare to its commercial value.”*

*“As per record, in March, 2013 when the trees in question were felled, the possession of the subject land was with Mr. Sidhu.”*

*“The land was declared as a reserved forest as per section 20 of Indian Forest Act, and was demarcating by pillars.”*

*“It is correct that I have filed copy of death certificate on marked as Mark “A” in respect of death of Mr. Nathu Mal Kadoul. The same was a part of the enquiry report and the investigations conducted by the Forest Department and the police respectively.”*

*“It is a fact that Mr. Subardhan the then Commissioner Garhwal had conducted the enquiry.”*

*“The Forest Department came to the knowledge the purchase of land by respondent no. 4 Mr. Sidhu after enquiry was conducted on felling of 4 trees in the month of March, 2013.”*

**Mr. B.S. Sidhu, (RW-4)** DGP Uttarakhand, Officers Colony, Kishanpur, Dehradun, had filed an affidavit in evidence (Exhibit RW/A). The Documents annexed with the affidavit are RW 4/1 to RW 4/44. He was cross examined by the other side, in reply of which he had deposed, the relevant extract, as under:

*“Since 30<sup>th</sup> September, 2013, I became DGP, State of Uttarakhand and, therefore, my jurisdiction extended to the entire state of Uttarakhand. Dehradun is my Head Quarter.”*

*“I had proposed to buy this land because I was very fond of living in the forest area and this land appeared to be ideal for that purpose and to build the house. The land had lot of trees. After making preliminary enquiry about title of the land, particularly in relation to the owner of the land, I found everything in order and then I entered into agreement to sell.”*

*“The Cheque of Rs. 60 Lakh mentioned in the affidavit is the same cheque which is mentioned in the Sale deed.”*

*“All the three cheques mentioned in the Sale Deed were handed over to the seller at the time of registration of the deed.*

*The first cheque was given at the time of execution of agreement to sell while two other cheques were given along with the sale deed. I did not take any steps to protect the property after the execution of the sale deed, because I wanted to ensure that the demarcation by fixation of pillar was done by the Department prior to taking over of possession of the land, keeping in view my position and status. I had read and understood the contents of the agreement to sell as well as the Sale Deed. It is correct that in the Sale Deed it has been recorded that the possession of the property has been handed over to the purchaser on the 21<sup>st</sup> May, 2012 witness volunteers.”*

*“The property was mutated in my name on 13<sup>th</sup> March, 2013, Even after the mutation, I did not take any steps to protect the property.”*

*“I do not remember the exact date on which I had surrendered title of the land to the Forest Department. The Forest Department had applied for mutation of the land in the name of the Department in my place which I did not object to and the land has been mutated in the name of Forest Department.”*

*“As the things are shown now the land was a reserved forest but it was not shown when I decided to buy the land.”*

*“It is correct that this was declared as a reserved forest in the notification issued in the year 1967-68.”*

**“Question:-** *I put it to you that prior to the Registration of the sale deed the application for demarcation of the property had been rejected by the authorities on the ground that it was a reserved forest land.”*

**“Answer:-** *It is not true. Later on I came to know that the demarcation application was rejected on some other ground, which I am not sure of. At this stage the witness has been shown the order dated 26<sup>th</sup> October, 2012 of the SDM same is marked exhibit RW 4 /X.”*

*“It is incorrect to suggest that I had knowledge that the Nathu Ram from whom I had purchased the land had already died in the year 1983. I know that some enquiry was conducted by the police Mr. Swatantar Kumar, CO, DSP who had submitted a report to the higher authority about this land. I am not aware of any finding recorded in this report that Nathu Ram had died in the year 1983 from whom I had purchased land. Mr. Nathu Ram*

*from whom I purchased land was brought to me by two Advocates, he was resident of Village Rohta. I do know the persons who brought him to me.”*

*“It is incorrect to suggest that these two advocates had said to CO that Mr. Nathu Ram was introduced to them by me and vice a versa thereof is not true.”*

*“The CBI had sought sanction to conduct an inquiry against me for possessing disproportionate assets known sources of income.”*

*“I have not lodged any report against the people who introduced me to seller as of now.”*

*“It is correct that I was challaned by Forest Department in two different cases.”*

*“It is correct that the proceeding on the basis of the report lodged by me have been stayed by the High Court.”*

*“The figure of 250 trees that I have given is on the basis of approximation as the land was full of trees. Most of the trees were Saal trees.”*

*“When, I bought the land where the trees were standing, nearly 1 begha of land at the top of hill was of use and there were hardly any trees on that begha. There might have been 1 or 2 odd trees. When I purchased the land, it was identifiable but not physically demarcated. On 20<sup>th</sup> March, 2013 I saw some cut trees on the land.”*

*“I am aware that the Forest Department have filed the challan in relation to felling of these trees regarding which I suppose some enquiry was conducted.”*

*“I am aware that two criminal complaints no. 1480/13 and 1481/13 were filed before the court of the Judicial Magistrate, Dehradun, where I have been stated to be responsible for the felling of trees.”*

*“It is correct that after filing of these complaints I have lodged a FIR.”*

*“Land was mutated in my name on 13<sup>th</sup> March, 2013.”*

*“The land in question is adjoining to the main road and has an approach road to the land.”*

***“Answer to Court Questions:-*** *I can identify Saal trees as well. I do not know if the environmental value and the value of the wood in terms of the name of Saal tree is much higher than normal trees.”*

*“It is correct that I have also filed an FIR No. 79/2013 at PS Rajpur, Dehradun against Mr. Dheeraj Pandey and Ors.”*

*“I bought the land of my own volition after due verification. It was about one month after the felling of the trees at the site that I read the statement of Mr. Dheeraj Pandey in the newspaper wherein Mr. Pandey had proclaimed that he had managed to find some 25-30 years old notification wherein the land had been notified as reserved forest.”*

*“I do not remember the name of the newspaper.”*

*“I did not lodge any FIR against anyone.”*

*“I made enquiries from the seller and the revenue department to find that the land in question was a private land.”*

*“It is correct to suggest that I had purchased the land in question in November, 2012. I did not lodge any FIR or any complaint till date against the seller.”*

*“It is correct that the Hon’ble High Court of Uttarakhand on 10.03.2017 set aside the summoning order against some of the accused persons in the aforesaid FIR. A departmental charge sheet was issued to me on 01.05.2016. It is correct to suggest that the charge sheet in respect of illegal purchase of forest land and illegal felling of 25 Saal trees.”*

*“I was residing at 2, Police Officers Colony, Kishanpur, Dehradun during my tenure as DGP.”*

*“The land in question had been mutated in my name.”*

One of the witnesses produced by Respondent No. 4 is **Mr. Naseem (RW - 4/12)**. He has submitted his evidence by way of affidavit. Thereafter, he was cross examined by the opposite side. On completion of the evidence of Mr. Naseem on 21.07.2015, the Court observed as under:

*“This witness is patently speaking lies before the Tribunal. Even for the suggestion made that his statement recorded under Section 164, Cr.P.C. by the Learned Magistrate was contradicted*

in his Affidavit, he is trying to blame the Learned Magistrate that the Judge did not record his statement in full and he had left without raising any protest.”

**99.** Besides, an objection had been raised by respondent No. 4 that the instant application is barred by time. In the synopsis filed on his behalf, it has been stated that the cause of action for filing the present application first arose on 9<sup>th</sup> of March, 2013 and 18<sup>th</sup> of March, 2013, when the trees are said to have been felled. It is to be noted that the Original Application (309 of 2013) has been filed in the month of October, 2013.

**100.** As the illegal felling of trees and sale of reserve forest land involved a senior officer of the Indian Police Services namely Mr. B.S. Sidhu who was posted as D.G. in the Government of Uttarakhand, initially not many people knew about the incident. It was only when the matter was widely reported in the newspaper that for the first time it became a source of information to all. But looking to the status and position of Respondent No. 4 no one stepped out for making any complaint. On an anonymous letter received by the Bar Association that it initiated the proceedings. It was brought to the notice of the Association that the person was afraid and therefore he did not wish to come in the forefront. It was the executive committee of the

Bar Association which decided to file this Original Application.

**101.** In these circumstances it cannot be said that there was any delay in filing the Original Application and if it was so, there was just explanation for the same, for the reasons aforesaid.

On the contrary the Original Application (384 of 2015) filed by B.S. Sidhu (Respondent No. 4) is time barred. The said Original Application (384 of 2015) had been filed in September 2015 whereas the cause of action i.e. cutting of 25 Saal trees had arisen in the month of March 2013. At least after having received the information/notice of filing of the Original Application against him in October, 2013, he ought to have taken steps to file an Original Application, if not earlier. Despite of being a respondent in the Original Application (309 of 2013) he had chosen to file the Original Application before the Tribunal in September, 2015. It is a clear case of gross delay in filing of the Original Application by him. In these circumstances there is no just explanation for Mr. B.S. Sidhu to have filed the Original Application nearly after 2 ½ years (30 months). Therefore, it is the original application (384 of 2015) filed by Mr. B.S. Sidhu which suffers from infirmity of being time barred and liable to be dismissed and not the one filed by National Green Tribunal, Bar Association (309 of 2013).

**102.** Similarly, another preliminary objection taken by Respondent No. 4 in Original Application 309 of 2013 is in respect of *locus standi*. It has been elaborately submitted in the Original Application (309 of 2013) and deposed by Secretary, Bar Association in his statement before the Tribunal reiterating the reason as to why no individual from State of Uttarakhand had the courage to file an application before the Tribunal. It was only after receiving an anonymous letter which clearly mentions that the person was afraid and did not wish to come to the forefront then NGT Bar Association decided to file the present Original Application. It has been specifically deposed by Secretary NGT Bar Association that before filing the application they had made an enquiry and the matter was widely reported on the internet as well as by the print media. They had also considered that general public was affected and a high dignitary of police was involved in this case, that after due deliberation the association decided to take up the matter. Needless to say that in case of violation of environmental laws any person or member of public has the right to initiate the proceeding and strict principle of *locus standi*, as followed otherwise, is not applicable in cases of present nature. It is always the environment which is one of the parties in a litigation when a person takes up a cause in its behalf.

**103.** Another argument raised on behalf of respondent no. 4 is in respect of the factum of possession of the land in question with him. The reference made on the subject by Dr. Dheeraj Pandey, in his examination Chief, was only in respect of the report of lekh Pal of Jakhan area. As a matter of fact it is more than clear, from the sale deed dated 20<sup>th</sup> of November, 2012 executed in favour of respondent no 4 and the mutation record as on March, 2013 that respondent no. 4 was in possession of the land in question. On 30<sup>th</sup> August, 2016 it was stated by Dr. Dheeraj Pandey that when the trees in question were felled, the possession of the land was with Mr. B.S. Sidhu.

**104.** It has also been submitted that in the sale deed dated 20/11/2012 executed in favour of respondent no. 4, mention has been made about existence of 250 trees in the land for which sale deed was executed.

Firstly, it is not known as to how the count of the trees as 250 was made without demarcation on the ground. Secondly, the said trees were admittedly Saal trees but it was not so mentioned in the registered sale deed, because had the species been mentioned then the case would have been referred to Forest Department, for valuation of the trees which would have jeopardized the plan of encroachment on forest land. Thirdly, mention of 250 trees

alone appears to be with the purpose of keeping away the Forest Department. Fourthly, Respondent no. 4, in his examination in chief dated 3<sup>rd</sup> September, 2015 has answered a court question that – “I can identify saal trees as well”. Fifthly, he had also visited the land in question. Therefore, despite of the fact that he was having knowledge about the saal trees mention of 250 trees alone in the sale deed was deliberate to keep the Forest Department out of the picture. Sixthly, it was not known as to who had valued the trees to be worth Rs. 2.50 lakhs, which were standing on the land purchased. The criteria for such valuation has nowhere been disclosed.

**105.** Further, it had been submitted that the name of the forest department was never recorded in khatauni (revenue record) when respondent no. 4 had purchased the land. At the outset it may be mentioned that the learned Chief Secretary of Uttarakhand had in his affidavit dealt with this issue. Precisely at pg. 343 (hindi) and page 369 (English translation) is the letter no. 918 dated 13/5/1970 written by Mr. R.N. Verma, FSO to the Tehsildar, Dehradun to enter the name of forest department in revenue records. The Principal Chief Conservator of Forest may not have stated about the status of land but in his letter to the Chief Secretary and DGP (Uttarakhand), he has clearly mentioned that it is a reserved forest land. It was also

contended on behalf of the respondent no. 4 that Mr. Nathu Ram had a bank account and the payment was made through account payee cheque. On perusal of the affidavit of Mr. Swatanter Kumar DYSP/CO Rudraprayag (AW/5) who had conducted an enquiry in this case mentioned in the report that Mr. Nathu Ram has received no money. Respondent No. 4, in this rebuttal evidence on 18/05/2017, deposed that he had paid Rs. 60 lakhs to Mr. Nathu Ram. He has admitted that he has been duped. But it is significant to note that he had not even lodged any FIR against the person who had duped him for Rs. 60 lakhs.

**106.** It has also been argued that respondent no. 4 has been falsely implicated in this case. Further it is said that the implication is without any proof.

In order to mention a few circumstances as revealed from the evidence on record, it may be mentioned that respondent no. 4 had visited the site in question in the month of April 2012, alongwith Mr. Nathu Ram, Mr. Deepak Sharma, Ms. Smita Dixit and others.

Secondly, the Local Forester (Van Daroga) was called by him to his official residence on 19<sup>th</sup> April 2012 to enquire about the land.

Thirdly, respondent no. 4 had on 21.05.2012 entered into an agreement to sell with Nathu Ram. Therefore, Nathu

Ram had filed application, for demarcation of land, before SDM (Sadar) Dehradun.

Fourthly, he extends the agreement to sell in the month of August, 2012 up to November 2012 on the ground that the demarcation proceedings are still going on.

Fifthly, it is on 26<sup>th</sup> October, 2012 that SDM (Sadar) dismisses the application for demarcation filed by Mr. Nathu Ram.

Sixthly, respondent no. 4 then gets a sale deed executed in his favour despite being fully aware about the status of the land as reserve forest and also of the fact that demarcation proceedings had been dismissed by the SDM.

Seventhly, after execution of the sale deed on 9<sup>th</sup> March, 2013 four saal trees were felled on the land in question. The wood was not stolen and was lying at the site. Thereafter, the forest department lodged a case and started investigation. Initial a case was filed against Mr. Nathu Ram, son of Mahku Mal because at that time the entry in the revenue record was in his name.

Eighthly, the mutation was then entered in the name of respondent no. 4 on 13<sup>th</sup> March, 2013 i.e. to say only four days after execution of the sale deed. The District Magistrate, Dehradun, in his report submitted to the Chief Secretary has mentioned about the fact as to how the matter proceeded in haste.

Ninthly, on 18<sup>th</sup> March, 2013, twenty one saal trees were again felled on the same land and the wood was not stolen. It may be to remove them trees gradually in due course.

From the aforesaid circumstances, the evidence on record and the investigation done by the police, revenue and forest department the finger of doubt points towards respondent no. 4 and it is also very clear that he is the beneficiary of the wrongful gain.

**107.** It has also been submitted that no witness was examined to prove the allegations. At the outset, it is to be noted that crime took place in a reserve forest area where, in the normal course, it is difficult to find any witness, much less to say independent witness. However, it is also settled principle of law that when there is no witness of the incident, circumstantial evidence is a legal evidence which can also be taken into account. It is a well-known saying that circumstances never tell a lie.

**108.** It is also submitted that Mr. Subash Kumar, Chief Secretary did not appear in the witness box. The affidavit filed by the Chief Secretary was based on facts. Moreover, when an application was filed by respondent no. 4 to call Mr. Subhash Kumar for cross examination, the tribunal did not consider it necessary in view of the categorical affidavit and the circumstances of the case, declined such a request.

Another submission made on behalf of the respondent was in respect of cross examination of Sh. V.D. Joshi wherein he stated that he had seen 15 pieces of woods at the forest chowki and not at the site. Reading of the affidavit filed by Mr. V.D. Joshi, as a whole, reveals that he was appointed as an Investigation Officer of case no. 15/Raipur/2012-13 by the Range Officer, Raipur Range on 14<sup>th</sup> March, 2013. The felling of trees took place on 9<sup>th</sup> March, 2013 and 13<sup>th</sup> March, 2013, the local Forest guard as well as Forester had engaged local labourers for converting the felled trees into small logs and transported the same to the nearest forest chowki at Malsi. As the felled trees were case property, they were required to be kept at a safe place for further investigation in the case. It was for the purpose of transporting that the trees were converted into logs.

**109.** As regards to the submission made that the case property was not recovered from the custody of Mr. B.S. Sidhu, it would suffice to say that according to the sale deed and mutation, respondent no. 4 was in possession of the land in question. In the later part of examination, respondent no. 4 had admitted his possession of the land. In respect of the affidavit filed by Mr. M.H. Khan, Home Secretary, before High Court it would be sufficient to mention that the same was challenged by respondent no. 3 and other forest officers. Above all, Mr. M.H. Khan has

never been examined in this case before the Tribunal. It had also been submitted that no attempt was made to remove the trees or stumps from the spot. While considering the case in its entirety and the object of respondent no. 4 to have a house in the forest, the monetary value of saal wood was not a matter of interest for Mr. B.S. Sidhu. He wanted the forest land to be cleared as house could not have been constructed without felling of the trees. In his deposition on 3<sup>rd</sup> September, 2015, he has stated that “I had proposed to buy this land because I was very fond of living in the forest area and this land appeared to be ideal for that purpose and to build the house. The land had lot of trees.” Furthermore, the conclusion of DGC(Criminal) in his letter dated 18<sup>th</sup> May, 2013 is that it is a case of clear violation of Forest Act and Mr. B.S. Sidhu is *prima facie* responsible for illegally purchasing the Reserve Forest land and subsequent felling of 25 saal trees from the land was also with the purpose that the value of land be increased.

**110.** It has also been submitted on behalf of respondent no. 4 that first case is shown to have been registered against Mr. Nathu Ram and the second one against Mr. B.S. Sidhu on 20/03/2013. It is revealed from the material on record that on the basis of an application, purported to be written by some Mr. Nathu Ram, the revenue official sought to do a

spot inspection of the land on 19/05/2012 and therefore, Mr. Nathu Ram was named in the beginning and was suspected to be involved in the felling of 4 saal trees, by encroaching upon the forest land. In these circumstances the name of Mr. Nathu Ram figured as a suspect. Thereafter, during the enquiry of first case by investigating officer Mr. V.D. Joshi, it emerged that respondent No. 4 had entered into an agreement for sale of land with imposter of Mr. Nathu Ram and also extended the same for the reason that demarcation is not complete. Even after cancellation of demarcation proceeding of the land in question by SDM (Sadar) Dehradun on 26/10/2012 respondent no. 4 had still purchased the land by having a sale deed executed (with possession) in his favour and finally got the mutation done in his name. This was got done because of his position and power, in spite of objections raised by the then Lekh Pal (Jakhan) as is evident from the affidavit of Revenue Secretary, Government of Uttarakhand and Mr. V.N. Joshi filed before the Tribunal in O.A. no. 309 of 2013. When 21 saal trees were again felled, in the same area, on 18/03/2013 it was clear to the forest officers that as per sale the deed and the revenue record the land in question was sold to respondent no. 4 and also mutated in his name. Therefore, the second case was filed in the name of B.S. Sidhu, respondent no. 4.

**111.** To sum up, after thoroughly considering the case of the parties and on perusal of the material on record it boils down that :

- (a) The applicant himself accepts that he is a “Bonafide Purchaser” of the reserve forest land. But miserably fails to explain the reason behind purchasing the reserve forest land along with the 250 Sal trees and that too without permission under law.
- (b) Even the stamp duty which was paid by the applicant for the 250 Sal trees, was calculated by him at the rate of Rs 1000 per tree. This is most bizarre and fraud valuation of the trees. Mr. B.S. Sidhu also fails to answer an important question as to how number of trees were counted as 250, when he himself says that the land was not demarcated?
- (c) Moreover, the amount of stamp duty paid by Mr. B.S. Sidhu for 250 Saal (Shorea robusta) trees, as per page no 6 of sale deed, was assessed to be worth Rs. 2.50 Lakhs. Even a layman knows that Saal (Shorea Robusta) is a forest tree species and not a horticulture one. It is only the Forest Department which is competent to do the valuation of forest tree species and not by any individual or other agency, at its own whims and fancies.
- (d) It is surprising that in-spite of knowing all this, the Mr. B.S. Sidhu had “insisted” on paying the stamp duty on Saal trees, and did not consider it necessary to refer the matter to the Forest Department or to seek their opinion or ask the

DFO Mussoorie for valuation of forest tree species? Had this been done, such an illegal land deal would not have been executed. But he had deliberately avoided it and ultimately got the government reserve forest land mutated in his name.

(e) This clearly indicates that the sale and purchase of the Reserve Forest land was a well thought out and planned strategy adopted by B.S. Sidhu which culminated in illegal felling of 25 Saal trees.

**112.** First felling of four Saal trees took place on 9<sup>th</sup> March 2013. In spite of knowing this fact the Applicant (384/2015) did not inform the forest department or any forest official regarding the same. Instead of informing the forest officials about the felling of Saal trees on the said land, he had on 13.03.2013 got the mutation entered in his name, of the government land on which the trees had been felled. Thereafter when 21 Saal trees were felled on 18.03.2013 the matter was reported in press and media. The forest department gets the information of the conspiracy. The respondent/applicant Shri B.S. Sidhu concocts a false story. This clearly reflects his malafide intention of encroaching the reserve forest land.\

**113.** The allegations against respondents No. 7 to 10 about hatching conspiracy are totally false and have no substance

whatsoever. Respondents No. 7 to 10 are not concerned, in any manner, with renewal of agreement of sale by Mr. Satish Gupta. It is relevant to mention that Respondent No 10 was posted as D.F.O. Mussoorie on 09.11.2012 and the agreement for sale by Satish Gupta or Sharad Sood is said to have been executed much before the date of his joining there, in pursuance of his transfer. The renewal of such Agreement for Sale is neither related in any manner with Respondents No. 7 to 10 nor is of any consequence. On the other hand, when it transpired that B.S. Sidhu, Satish Gupta and his party were involved in a proceedings for mutation of the land, which was a part of Reserve Forest land and over which none of these persons had any title or right, respondent No. 10, as DFO Mussoorie Forest Division effectively intervened in the matter and the mutation proceedings were ultimately concluded in favour of forest department of the State.

**114.** After submission of false chargesheet against the forest officers by the police, under the influence and pressure of, Mr.B.S. Sidhu, who himself was posted as DGP, the Hon'ble High Court dismissed the writ petition as having become infructuous. However, the forest officers were granted stay in the proceeding before lower court, on their Application filed under Section 482 of Cr.P.C. The facts mentioned in the Affidavit filed by Home Secretary before the Hon'ble

High Court are misrepresented, which are challenged by the respondents.

**115.** Case no 15/Raipur/2012-13 for felling of 4 trees was immediately registered on 09.03.2013 and seizure memo was prepared. It was not possible to transport the felled trees and therefore they were converted into logs by engaging labourers who were officially paid for their work and accounted for under appropriate expenditure head. The logs were duly accounted for in the Seizure memo and C-17 register of Raipur Range. The logs were transported to the Forest Guard Chowki at Malsi under due supervision of the local staff. All these steps are part of official procedure that needs to be followed in a case of illegal felling of trees. This shows that prompt action was taken in the case by the forest staff of the area and there was no attempt by them to hide or hush up. In-fact, it is clear that forest staff performed their official duty promptly by making all the entries in official records.

**116.** After felling of 21 Saal trees the case no 16/Raipur/2012-13 was registered on 20.03.2013 and seizure memo was prepared, accordingly. As it was not possible to transport the entire felled tree, they were converted into logs and duly accounted for in the Seizure memo and C-17 register of Raipur Range. The logs were

transported to the Government Forest Guard Chowki at Malsi in Raipur Range, under due supervision of the local staff. Therefore, prompt action was taken in this case by the forest staff and there was no attempt by them to conceal anything. The incident of illicit felling was reported to all the senior officers including Principle Chief Conservator of Forests (PCCF) Uttarakhand, Chief Conservator of Forests-Garhwal and Conservator of Forests, Yamuna Circle on phone.

**117.** On the basis of material on records and the evidences collected, the enquiry officer gave findings of culpability of the respondent/applicant B.S. Sidhu in the offences under the Forest Act committed on 09.03.2013 and 18.03.2013. Accordingly, the required criminal complaints were filed against him. It is imperative to point out that the applicant, in order to pre-empt the possible verdict in the criminal prosecutions initiated against him for commission of forest offences, lodged an F.I.R. against respondents No. 7 to 10. The said F.I.R. appears to be a defence concocted against the allegations in Complaint Case No. 1480/2013 and Case No. 1481/2013. It would cause injustice to the respondents, who are Forest Officers/ Public Servant and had acted in good faith, while exercising their powers under Indian Forest Act 1927.

**118.** It would be relevant to mention here that under Section 74 of the Indian Forest Act 1927, as applicable in the State of Uttarakhand, no suit, prosecution or other legal proceedings lie against the respondents who are public servants and have acted in exercise of their powers under Indian Forest Act 1927. Therefore, in the instant case the F.I.R. and the entire investigation done in furtherance thereof and consequent filing of charge-sheet is without any authority of law.

**119.** There was no fabrication or ante dated documents, as alleged. The seizure memo was prepared in the handwriting of respondent no. 8, Jagmohan Singh Rawat. All the allegations in this respect are false and baseless and there is no iota of truth. The seizure memo clearly mentions the place of seizure as Rajpur compartment No. 4. This clearly implies that trees/ logs were recovered from the site in question. It is pertinent to mention here that the Site (Reserve Forest Land) from where the logs were recovered was mutated in the name of B.S. Sidhu, which shows that it was, at that time, in his physical possession. The investigation of illegal felling of 4 Saal trees was given to Mr. V.D. Joshi by the Range Officer of Raipur Range on 14.03.2013 and investigation of illegal felling of 21 saal trees was given to Mr. V.D. Joshi on 21.03.2013 respectively.

**120.** Respondent 10 an officer of Forest Department was duty bound to protect the environment and forests which he had done while performing his official duty, in the interest of the State. Bare perusal of the records submitted alongwith the affidavit, makes it apparent that a deliberate and willful attempt was made by Mr. B.S. Sidhu to grab the Reserve Forest land, but it was owing to timely efforts made by the forest officers that his malafide designs to encroach upon the reserve forest land had failed.

**121.** The Forest officers of Mussoorie Forest Division had taken all necessary steps against illegal felling of trees under respective acts i.e. Indian Forest Act 1927 and The Uttar Pradesh Protection of Trees in rural and Hill Area Act, 1976. Complaints received in such matters are required to be taken up immediately. Accordingly all necessary actions were taken by Forest Officers, in the instant case

**122.** It may also be mentioned here that the forest department had not violated any statutory environmental obligations, rules or regulations. The cases of illegal felling of trees are to be dealt with, as per provisions of existing law. Proper legal action has to be taken up by the forest staff for timely detection of the crime under the forest laws, by prompt seizure of the felled trees, by conducting inquiry, and also to apprehend the culprits at the earliest. In the instant case

there is no evidence of connivance of forest officials whatsoever, as alleged by B.S. Sidhu. The forest officers had, in the present case, discharged their official duties in the interest of the State, irrespective of the status of the offender.

**123.** “Forest” areas are clearly identified and demarcated in the Working Plans of Mussoorie Forest Division. Apart from the fact that compounding of Forest offences is done as per power vested in the Forest officers under relevant sections of Indian Forest Act, 1927 and The Uttar Pradesh Protection of Trees in rural and Hill Areas Act, 1976, the Forest Department grants permission for felling of trees by following the rules provided under the aforesaid Act of 1976, after conducting an inquiry on the application submitted by a person. It is under Section (5) of the said Act which authorizes under The Uttar Pradesh Protection of Trees in rural and Hill Areas Act, 1976. The permission for construction activity in Doon Valley is sanctioned by MDDA under their bylaws. All the allegations of abetting, aiding and colluding with builders are false and baseless as there is no evidence worth the name to that effect.

**124.** After having considered the submissions of the counsels for rival parties and on careful perusal of the material on record which includes statements of the witnesses recorded

before the Tribunal, we are of the considered view that the application filed by National Green Tribunal Bar Association (309/2013) has merit. Mr. B.S. Sidhu, the then DGP Government of Uttarakhand had wished to have a house in Forest. In furtherance of such desire he had selected the instant site as being ideal, while he used to pass by through the said area. He had thereafter enquired and contacted different persons. Ultimately, the agreement to sale was got executed with the seller. According to him certain people had contacted him and showed him the site. The agreement to sell was later on extended. Ultimately, a registered sale deed was got executed of the land which was within Reserve Forest area.

Further, it is noteworthy that the value of the trees, numbering to be 250, was also mentioned in the sale deed and additional stamp duty was paid for it. Initially four Saal trees were felled but no one, including the purchaser Shri B.S. Sidhu had made any complaint about it. However, the Forest Department lodged a report and investigation commenced. Few days later twenty one more Saal trees were felled but again no report was filed by anyone and when the Forest Department came to know about it they registered another report and started the investigation. It is also to be noted that after the execution of Sale deed mutation was entered in the name of B.S. Sidhu. The evidence on record makes it amply clear that it

was in furtherance of the plan of B.S. Sidhu to have a house in the forest that of the aforesaid steps were taken by him.

Moreover, it is to be noted that in the registered sale deed mention had already been made about 25 Saal trees without there being any demarcation of the area. Despite of the fact that the proceedings for demarcation before the SDM concerned had been dismissed, the mutation in the revenue record came to be entered in the name of B.S. Sidhu. It is the case of B.S. Sidhu himself that he had purchased the land, paid consideration and got a registered sale deed executed. Therefore, he had claimed to be a bona-fide purchaser with consideration. The facts and circumstances of the case, therefore, leave no room of doubt that Reserve Forest area was sold for the purpose of non-forest activities.

**125.** Besides, the trees were felled after execution of sale deed by which a right is purported to have been created in favour of B.S. Sidhu but he had not made any complaint anywhere with regard to felling of trees. It is also relevant to mention here that B.S. Sidhu had not referred the matter to Forest Department, at any point of time, so as to have the value of the Saal trees assessed whereas such species are valued by the Forest Department. Above all, B.S. Sidhu at a later stage is set to have got the mutation entered, back

in the name of the Forest Department. During consideration of the case of Mr. B.S. Sidhu, had not denied the aforesaid facts. It is to be noted that once an offence regarding use of Reserve Forest area for non-forest purpose is prima-facie made out and Saal trees are felled on the said land, then the offence under relevant law is committed and re-entry of mutation in the name of Forest Department does not absolve him of the crime.

Needless to say, that once any provision of law is violated, the offence stands completed and the person concerned becomes liable for the consequences as per the said law. Having come to know through various sources including Revenue Department, visiting the site and valuation of Saal trees in the registered sale deed leaves no room of doubt that B.S. Sidhu had for the purpose of fulfilling his desire, to construct a house in forest is liable for purchasing the forest reserve area and felling of trees. Another significant fact of the present case is that as per the statement of B.S. Sidhu himself, he had been duped by the seller by receiving the amount of consideration but even then he did not file any report (FIR) or took any action against him till date.

**126.** In so far as the Original Application filed by B.S. Sidhu is concerned, as per earlier order both the cases were clubbed together and the evidence on record as well as the

statement of the witnesses recorded before the Tribunal were to be taken as common in both the cases. We may reiterate that Original Application filed by Mr. B.S. Sidhu comes after a long delay. As a matter of fact, in the normal course B.S. Sidhu ought to have approached the Tribunal in respect of felling of trees and against those who were responsible for the same. In any case, after filing of the Original Application by the Bar Association in 2013 there was no reason whatsoever for Mr. B.S. Sidhu, not to have filed an application soon thereafter. Instant application had come to be filed only in the year 2015, there does not appear any plausible explanation much less to say satisfactory explanation in this regard.

Besides, as mentioned above the grievance raised by the applicant in Original Application No. 384/2015 particularly against the respondent Forest Officer does not hold any ground. The respondent Forest Officers had done their duties in accordance with law. No illegal duty or irregular can be said to have been done by them. Moreover, in the reports filed by the higher authorities of the Forest Department, it has been clearly mentioned that the allegation made against the forest officials is only a step in retaliation because of the report, investigation, proceedings etc. which had been taken up against B.S. Sidhu. Therefore, on the ground of delay of a long period without any just explanation and even on merits, we hold that we

are not inclined to accept the relief sought in Original Application No. 384/2015, against the respondent forest officers. Accordingly, the Original Application filed by B.S. Sidhu deserves to be rejected.

**127.** It is relevant to mention here that violation of environmental laws is an infringement of civil rights. Therefore, a wrongdoer has to compensate for the injury. This distinguishes it from a commission of a crime which is a breach of public right and/or duty and the same is punishable in the interest of society. An action in civil wrong is initiated by the person injured whereas proceedings on commission of a crime are taken up by the State.

**128.** In tort relating to environment the burden of proof shifts to the wrongdoer once the Petitioner prima facie establishes the wrongful act. Another principle is "*res ipsa loquitur*" the thing speaks for itself. It is for the wrongdoer to justify the alleged tortuous act.

**129.** In an action in respect of civil wrong the test which is to be applied is that of preponderance of probability. But in commission of a crime, it has to be proved beyond a reasonable doubt.

**130.** In a tort arising out of environmental damage the Court would apply the principle of 'Strict Liability' as enunciated in M.C. Mehta's case [(1987) 2 SCC 395] read with Section 17 of NGT Act.

**131.** Before proceeding further, in the matter it would be relevant to mention about the severity of impact on environment by felling of trees, as has been observed by larger bench of the tribunal, in the case of *Court of Its Own Motion Vs. State of Himachal Pradesh (O.A. No 488/2014)* decided on 1.08.2017 which reads as under.

*“Trees play a very important role in maintaining the ecological balance in the biosphere. SINCE THE BEGINNING, TREES HAVE FURNISHED US WITH TWO OF LIFE'S ESSENTIALS, FOOD AND OXYGEN. On an average, one tree produces nearly 260 pounds of oxygen and absorbs up to 48 lbs of carbon dioxide a year. WITH THE EVOLUTION OF HUMAN CIVILIZATION CONTRIBUTION OF TREES IN MAKING OUR LIFE COMFORTABLE INCREASED SEVERAL FOLD, I.E., THEY PROVIDE US NECESSITIES SUCH AS CLOTHING, SHELTER, MEDICINE, AND TOOLS. TODAY, THEIR VALUE CONTINUES TO INCREASE AND MORE BENEFITS OF TREES ARE BEING DISCOVERED AS THEIR ROLE EXPANDS TO SATISFY THE NEEDS CREATED BY OUR MODERN LIFESTYLES. TREES CONTRIBUTE TO OUR ENVIRONMENT BY PROVIDING OXYGEN, IMPROVING AIR QUALITY, CLIMATE AMELIORATION, CONSERVING WATER, PRESERVING SOIL, AND SUPPORTING WILDLIFE. DURING THE PROCESS OF PHOTOSYNTHESIS, TREES TAKE IN CARBON DIOXIDE AND PRODUCE OXYGEN WE BREATHE. They provide us with fresh air to breathe, shade in summers, food, and other benefits without which we cannot even think of living. TREES CONTROL CLIMATE BY MODERATING THE EFFECTS OF THE SUN, RAIN AND WIND. LEAVES ABSORB AND FILTER THE SUN'S RADIANT ENERGY, KEEPING THINGS COOL IN SUMMER. TREES ALSO PRESERVE WARMTH BY PROVIDING A*

SCREEN FROM HARSH WIND. IN ADDITION TO INFLUENCING WIND SPEED AND DIRECTION, THEY SHIELD US FROM THE DOWNFALL OF RAIN, SLEET AND HAIL. TREES LOWER THE AIR TEMPERATURE AND REDUCE THE HEAT INTENSITY OF THE GREENHOUSE EFFECT BY MAINTAINING LOW LEVELS OF CARBON DIOXIDE. Both above and below ground, trees are essential to the eco-systems in which they occur. Far reaching roots hold soil in place and fight erosion. Trees absorb and store rainwater which reduce runoff and sediment deposit after storms. This helps the ground water supply recharge, prevents the transport of chemicals into streams and prevents flooding. Fallen leaves make excellent compost that enriches soil. In the present day scenario trees in Urban Environments help in muffling the urban noise. In Suburban Environments they help in providing shade canopy and noise buffers and also congenial habitat for suburban wildlife, while in the rural environment they protect the crops from wind, control erosion and create diverse plant and animal habitats. Despite knowing the importance of trees, human beings are still cutting down the trees and forests have started depleting from this beautiful earth. Deforestation has the following dangers: –

**Destruction of carbon sinks:** Carbon sinks are huge stores of carbon. Large quantities of carbon are trapped by plants in general and trees in particular in the body biomass thereby helping in balancing the carbon dioxide content in the biosphere. Mature trees hold large quantities of carbon. Each acre of the forest has been taking roughly 0.75 metric ton of carbon out of the atmosphere annually, doing its humble part to counteract greenhouse warming [The Case of Missing Carbon: National Geographic]. A mature tree can absorb up to 48 lbs of carbon dioxide a year (McAliney 1993). In fact, large trees at maturity can store approximately 1000 times more carbon dioxide than saplings (Nowak 2001). This difference highlights the importance of maintaining large tracts of healthy, mature forest, which will be much more useful in establishing carbon sinks than planting saplings [Ravin, A & Ranie, T: Best Practices for Including Carbon Sinks in Greenhouse Gas Inventories]. When a tree is felled and burnt the carbon present in its body gets converted back into carbon dioxide and is released into the atmosphere. Timber extraction may only represent a comparatively small return of carbon to the atmosphere: wood does not release CO<sub>2</sub> until it decomposes or is burnt. The oxidation of

leaf litter and surface soil biomass in felled areas will add to net emissions in the short term. Where re-growth or restocking does not take place, there is a potential net loss of 50 t C/ha [Environmental impacts of land management; Natural England Research Report NERR030; pp 131 – 142]. –

**Soil Erosion:** Deforestation makes soil prone to erosion by agents such as wind and water. The roots of trees hold the particles of soil together, thus preventing the fertile top soil from being carried away. Soil erosion leads to loss of productivity of the land due to loss of mineral nutrients and soil microorganisms

**Destruction of animal habitats:** Apart from domesticated animals and marine and fresh water animals, all other animals need forests as their habitats. These forests do not only provide a place for the animals to roam around but also provide their food and act as a source of protection from predators through camouflage. Actually each plant/tree provides a unique microhabitat of a great array of macro and microscopic animals and when it is felled these organisms are significantly affected. Destruction of the animals' habitats literally kills the animals. –

**Source for medicine:** Many plants/trees are a source of important medicines used for the treatment of diseases in case of human beings as well as domesticated animals. Destruction of such trees leads to destruction of such medicines.

**Greenhouse effect and global warming:** Nature balances the flow of energy and nutrients. Trees and forests play a very vital role in the flow of energy and cycling of nutrients like carbon, nitrogen, phosphorus, etc., in the biosphere. Destruction of trees/forests results in the disturbance in the natural balance in the cycling process of various nutrients. For example, recent calculations suggest that carbon dioxide emissions from deforestation and forest degradation (excluding peat land emissions) contribute about 12% of total anthropogenic carbon dioxide emissions with a range from 6 to 17% [van der Werf, et al. (2009). "CO<sub>2</sub> emissions from forest loss". *Nature Geoscience* 2 (11): 737–738]. Deforestation causes carbon dioxide to linger in the atmosphere. As carbon dioxide accrues, it produces a layer in the atmosphere that traps radiation from the sun. The radiation converts to heat which causes global warming, which is better known as the greenhouse effect. Destruction of forests also causes modification of climate of an area mostly leading to desertification

and aridity. –Trees, and plants in general, affect the water cycle significantly in a number of ways

- The tree canopy intercepts precipitation, and a part of it is in the process evaporated back to the atmosphere;
- Tree litter, stems and trunks slow down surface runoff;
- their roots create macropores – large conduits – in the soil that increase infiltration of water;
- they contribute to terrestrial evaporation and reduce soil moisture via transpiration;
- their litter and other organic residue change soil properties that affect the capacity of soil to store water.
- their leaves control the humidity of the atmosphere through the process of transpiration [Scherer et al (2013) *Soil, Water and Plant Characteristics Important to Irrigation*, North Dakota State University, Fargo, North Dakota].

Chopping down vast swathes of forest is known to have an effect on climate, but what is the impact of cutting down a handful of trees? A recent study by Zhang et al. (2014) shows that even smallscale land clearance – a few hectares or less – causes a noticeable change in local temperature. According to climate models, tropical deforestation causes warming, while loss of forest at high latitudes brings about cooling. The transition from warming to cooling occurs at latitude of around 35°. But most land-use change occurs at far smaller scales: To see whether the loss of only a few trees has any impact on the climate of an area Zhang et al (2014) studied 40 locations across North and South America and 12 locations in Eastern Asia[Zhang et al. (2014). Response of surface air temperature to small-scale land clearing across latitudes. *Environ. Res. Lett.* 9 (3): 7pp]. They observed that at tropical and subtropical latitudes (15°S to 20°N) local deforestation caused a warming effect of more than 0.5 °C on daily maximum temperature. In boreal latitudes (over 45°N and S) a cooling effect of nearly 1 °C on daily minimum temperature was reported. The team found that small-scale deforestation has the greatest localized warming effect in the tropics – between 10°N and 10°S. After that the impact decreases, switching to a cooling effect at latitude of around 35°.

Research also suggests probable increases in under-storey native plant cover and richness after tree over-storeys are mostly or completely removed. As the pattern of the plant cover changes, it affects the composition of the faunal assemblages in the area as

well [Abella, S. R. & Springer, J. D. (2014), *Effects of tree cutting and fire on understory vegetation in mixed conifer Forests; Forest Ecology and Management (2014)19pp*]. Generally, species favoring closed-canopy conditions with larger diameter trees are negatively affected when cutting results in grasslands or oak woodlands with small diameter trees and open canopies. Conversely, species favoring grasslands or very open woodland are positively affected.

*Felling of individual trees tends to be most significant outside woodland because the individual trees themselves, particularly veteran trees, are critical to the interest, for example in orchards, hedges and parkland [Read, H. (2000), *The veteran tree management handbook (Peterborough, English Nature, 2000)*]*

**132.** Now coming to the **question of compensation** for the purpose of reforestation and restoration of environment and ecology it is to be noted that the land in question measuring 3.86 acre is part of the Reserve Forest vide notification issued under section 4 of the Forest Act 1927 dated 01.05.1970 the said land was so notified. As had already been observed in the order dated 29.09.2014 that 25 *Saal* trees were illegally felled in the area in question, out of which 4 trees were felled on 09.03.2013 and 21 trees on 18.03.2013. The value of the said *Saal* trees, 25 in number, according to the schedule rate applicable in the State of Uttarakhand is Rs. 1,84,752. It has been confirmed on affidavit by Chetan Agrawal (PW-6A), an independent Forest and Environmental Analyst in his affidavit filed on 16.07.2015 who has given the value as per the schedule rates of Uttarakhand in Para 4(a). The said affidavit is at page no. 1140 of Volume I-E. The total area of the land is 1.56 hectares (3.86 acres). The forest where the

trees were felled falls in the category of type 3C/C2A, Moist Shivalik Saal Forest which has a density of 0.8.

**133.** For the purpose of Net Forest Value (NPV) the major forests have been regrouped into six ecological classes, depending upon their ecological services. On the basis of above rates for NPA was fixed in the light of the order the Hon'ble Supreme Court passed on 28.03.2008. The rates are as follows :

**Ecological Classes and NPV Rates in Rupees**

	<b>EcoClass I</b>	<b>Eco Class II</b>	<b>Eco Class III</b>	<b>Eco Class IV</b>	<b>Eco Class V</b>	<b>Eco Class VI</b>
Very dense forest	10,43,000	10,43,000	8,87,000	6,26,000	9,39,000	9,91,000
Dense forest	9,39,000	9,39,000	8,03,000	5,63,000	8,45,000	8,97,000
Open forest	7,30,000	7,30,000	6,26,000	4,38,000	6,57,000	6,99,000

**134.** The forest area in question comes under the category of Eco Value Category Class III and in 'very dense forest' Category for the purpose of NPV calculations, on the basis of the rates given above. Therefore, the NPV rate of the forest area in this case would be Rs. 8, 87,000 per hectare and the total NPV for 3.86 acres (1.56 hectares) forests would be Rs. 13,83,720.

**135.** It has been established, as given in the earlier part of the judgment, that 25 Saal trees were felled illegally at the instance of B.S. Sidhu, in the reserve forest land which was illegally purchased by him. Considering the fact that, at the relevant time, he was holding the post of Director General of Police in the State of Uttarakhand, we consider it just and proper to direct him to pay 10 times of value of tree calculated at the schedule rate that is Rs. 1,84,752 x 10 = Rs. 18,47,520 and twice the value of NPA of forest land that is Rs. 13,83,720 x 2 = Rs. 27,64,440. Both the amounts come to Rs. 46,14,960.

The amount of damages shall be paid by Mr. B.S. Sidhu to the District Forest Officer, within one month from today. This money would be used by the District Forest Officer in plantation of trees of suitable species in the area in question and non-forest land elsewhere in the Division. For this purpose a scheme will be prepared and it will be acted upon as per laid down procedure of the Government.

**136.** The findings recorded by the tribunal in this judgment are without prejudice to the rights and contention of the parties which they may have in proceedings other than the proceedings before the tribunal.

**137.** Consequently, the O.A. No. 309/2013 is disposed of. The Original Application No. 384/2015 is dismissed as being devoid of merits. There shall be no order as to costs.

**138.** As the Original Application No. 309/2013 and Original Application No. 384/2015 have been decided today, nothing remains to be adjudicated in M.A. Nos. 443/2015, 720/2015, 721/2015, 857/2015, 920/2015, 921/2015, 73/2016, 74/2016, 294/2016, 1045/2016, 101/2017, 566/2017 & 1168/2016.

**139.** Consequently, Miscellaneous Applications are dismissed with no order as to costs.

.....  
Justice Raghuvendra S. Rathore  
(Judicial Member)

.....,EM  
(Dr. Satyawan Singh Garbyal)

New Delhi.  
Dated: 27<sup>th</sup> August, 2018