

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

.....

Application No. 91 of 2012

In the matter of :

Devendra Kumar
S/o Munshi Ram,
R/o Village & PO Badshahpur Opposite
Radha Krishna Mandir,
District Gurgaon.

.....Applicant

Versus

1. Union of India
Through the Secretary
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi.
2. State of Haryana
Through the Chief Secretary,
4th Floor, Haryana Civil Secretariat,
Sector-1, Chandigarh-160001.
3. Department of Forests
Government of Haryana
Through the Conservator of Forests,
South Range, Gurgaon,
Forest Complex, Sohna Road,
Near Court Complex, Gurgaon,
Haryana.
4. Haryana Pollution Control Board,
Through the Member Secretary,
C-11, Sector – 6, Panchkula
Haryana- 134109.
5. Municipal Corporation of Gurgaon
Through its Commissioner
Civil Lines, Gurgaon-122001.

.....Respondents

M.A. No. 26 of 2013

In the matter of :

Sikender Pur Marble Market Association (Regd.)
Through its President
Vikram Singh Bhadana

.....Applicant

Versus

State of Haryana & Ors

.....Respondents

M.A. No. 27 of 2013

In the matter of :

Sikender Pur Marble Market Association (Regd.)
Through its President
Vikram Singh Bhadana

.....Applicant

Versus

State of Haryana & Ors.

.....Respondents

M.A. No. 35 of 2013

In the matter of :

Tarsem Singh s/o Bakshish Singh

.....Applicant

Versus

State of Haryana & Ors.

.....Respondents

M.A. No. 36 of 2013

In the matter of :

Tarsem Singh s/o Bakshish Singh

.....Applicant

Versus

State of Haryana & Ors

.....Respondents

M.A. No. 38 of 2013

In the matter of :

M/s Manjit Gas (HP) Agency

.....Applicant

Versus

State of Haryana & Ors

.....Respondents

M.A. No. 39 of 2013

In the matter of :

M/s Manjit Gas (HP) Agency

.....Applicant

Versus

State of Haryana & Ors

.....Respondents

Counsel for Applicant :

Mr. Raj Panjwani, Sr. Advocate, with Mr. Rahul Choudhary, Advocate.

Mr. R. Mishra, Advocate, applicant in M.A. 35 of 2013.

Mr. Amit Kumar, Advocate, applicant in M.A. 39 of 2013.

Counsel for Respondents :

Ms. Neelam Rathore, Advocate, for Respondent No.1

Mr. Narender Hooda, Sr. Advocate, with Mr. Davinder Pratap Singh, Advocate for Respondent Nos. 2 to 4.

Ms. Anubha Agarwal, Advocate, with Respondent No.5.

ORDER

CORAM :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice P. Jyothimani (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Dr.G.K. Pandey (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Dated : 14th March, 2013

JUSTICE SWATANTER KUMAR (CHAIRPERSON)

1. The applicant in application no. 91 of 2012, who claims to have great concern for the ecology of the Aravalli Hill Range, has moved the present application alleging that there is gross violation of the provisions of Environment [Protection] Act, 1986 (for short 'the Act') and the Forest Conservation Act, 1980 (for short 'the Forest Act'). Rule 5 of the Environment [Protection] Rules, 1986 (for short 'the Rules') provides for restrictions and conditions that may be imposed. The Ministry of Environment & Forests (for short the

‘MoEF’) had issued a Notification dated 7th May, 1992 (for short ‘the Notification’) which imposed prohibition on carrying out certain activities in the Aravalli Hills in District Gurgaon, which were causing environmental degradation. According to the applicant, large numbers of persons are carrying on commercial and other activities in violation of the said Notification. By indulging in such activities they are not only violating the law but are also causing serious damage to the environment.

2. Under the said Notification parts of district Gurgaon in Haryana and parts of district Alwar in Rajasthan are stated to be covered. The Notification prohibits carrying on of industrial and mining operations, cutting of trees, infrastructural activities and laying of transmission lines in the areas covered under the Notification and no such activity could be carried out without the prior approval of the Central Government. The said Notification was issued with a specific purpose to protect and conserve the ecologically sensitive areas of this range. The applicant specifically mentions that illegal activities were being carried on in Khasra No. 420/8 of Village Sikandarpur Ghosi, part of Aravalli Hill Range on a large extent. This was reflected as *Gair Mumkin Pahar*. However, in terms of the order of the Supreme Court passed in *M.C. Mehta vs. Union of India (2004) 12 SCC 118* this area has been declared as ‘forest’ and any use of the same for non-forest activity would require the prior permission of the Central Government under Section 2 of the Forest Act. This area is stated to have been encroached upon by marble traders and some other individuals who are carrying on

certain activities in violation of the said Notification. The allegation is also that these encroachers are felling trees and are even affecting the environment adversely by their activities. On this premise, the applicant has prayed that the respondents, including the State, be directed to stop the illegal activities in this area and has also prayed for restoration of the area to its natural state.

3. Vide order dated 20th December, 2012 the Tribunal had issued notice. When the matter came up for hearing on 23rd January, 2013, the Tribunal passed an injunction order, thereby restraining any commercial activity by construction of sheds or even industrial activity, including gas godowns and sale and purchase of marble and liquor in the Village Sikandrapur Ghosi till the next date of hearing. It was also directed in the said order that the forest area in all the three Villages (which were subject matter of Application No. 91 of 2012 and Application No. 4 of 2013), be protected and no non-forest activity be permitted to be carried on in those villages. This resulted in filing of applications, i.e. M.A. Nos. 26/2013, 27/2013, 38/2013, 39/2013, 35/2013 and 36/2013 for intervention as well as for vacating/modifying the aforesaid order.

4. The stand taken before the Tribunal by the Chief Conservator of Forests as well as the State of Haryana is that the area in question, particularly in relation to Village Sikandrapur Ghosi, is a non-forest area and the restrictions of the Forest Act do not apply to this area. However, it is conceded that the area is covered under the Notification dated 7th May, 1992 and as such the construction and activity carried on by the non-applicants in this area and the

manner in which it is being carried on is not permissible in law. It would be relevant at this stage to refer to the relevant part of the Notification dated 7th May, 1992, which reads as under:

“ Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2), of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby prohibits the carrying on of the following processes and operations, except with its prior permission in the areas specified in the Table appended to this Notification:

- (i) Location of any new industry including Expansion/modernisation;
- (ii) (a) All new mining operations including renewals of mining leases.
(b) Existing mining leases in sanctuaries/national Park and areas covered under Project Tiger and/or
(c) Mining is being done without permission of the competent authority.
- (iii) Cutting of trees;
- (iv) Construction of any clusters of dwelling units, farms houses, sheds, community centers, information centres and any other activity connected with such construction (including roads a part of any infrastructure relating thereto);
- (v) Electrification (laying of new transmission lines)

Any person who desires to undertake any of the above mentioned processes of operations in the said areas, shall submit an application to the Secretary, Ministry of Environment and Forests, New Delhi, in the attached application form (annexure) specifying inter alia, details of the area and the proposed process or operation. He shall also furnish an Environment Impact Statement and an Environmental Management Plan along with the application and such other information as may be required by the Central Government for considering the application

Areas where carrying on of processes and operations without permission is prohibited:

- (i) all reserved forests, protected forests or any other area shown as “forest in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon District of the State of Haryana and the Alwar District of the state of Rajasthan.
- (ii) all areas shown as:-
 - (a) Gair Mumkin Pahar, or
 - (b) Gair Mumkin Rada, or
 - (c) Gair Mumkin Behed, or
 - (d) Banjad Beed, or
 - (e) Rundh.

in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon district of the State of Haryana and the Alwar district of the State of Rajasthan

- (iii) all areas covered by notifications issued under section 4 and 5 of the Punjab land preservation Act, 1900 as applicable to the State of Haryana in the district of Gurgaon up to the date of this Notification.
- (iv) all areas of Sariska National Park and Sariska Sanctuary notified under the wildlife (Protection) Act, 1972 (53 of 1972)”

5. However, the affected parties (interveners) have taken up the stand that commercial activities that they are carrying on and the structures that they have raised are not unauthorised or impermissible. On the contrary, they have taken, these lands on lease from the Municipal Corporation and have been carrying on the activities of sale of marble, liquor and business of gas godowns from the premises in question. They also placed reliance upon some of the orders passed by the High Court of Punjab and

Haryana at Chandigarh wherein they were granted certain protections.

6. In view of the fact that the approach that we propose to adopt is primarily based upon the consent of the learned counsel appearing for the respective parties, it is not necessary for us to examine various issues arising in the present case for determination. Suffices it to note that on 28th February, 2013, the learned senior counsel appearing for the interveners had made certain statements and with the consent of the learned counsel for the parties, a Committee of lawyers was constituted to examine the impact of the Notification dated 7th May, 1992, to ensure implementation of the said Notification and ensure environmental protection while protecting the interests of these interveners to the extent it was possible in accordance with law. The order dated 28th February, 2013 reads as under: -

“M.A. No. 27/2013 in Application No. 91/2012

We have heard Learned Counsel for the parties at some length. There is possibility of a practical solution which shall protect the environment and shall not be violative of the Notification issued by the MoEF, subject matter of the present application. Learned Senior Counsel appearing for the Intervener Applicants have stated that they will give full co-operation, if necessary, even by removing machines, generator sets and would not carry on any activities which will otherwise pollute the environment and will use only the existing road to reach their site and will not construct any new road. This, we are recording for the purpose of information. Let a Committee be constituted consisting of Mr. Narender Hooda, Learned Senior Counsel, Mr. Raj Panjwani, Learned Senior Counsel and Mr. Manjit Singh assisted by a Senior Officer of the Forest Department, Member Secretary of Haryana Pollution Control Board and one responsible officer from Municipal Corporation of

Gurgaon. The Meeting of the Committee so constituted will be held at 2.00 P.M. tomorrow at Haryana Bhawan and they shall suggest a clear management programme ensuring environmental protection. Let needful be done and matter be listed before us on 6th March, 2013.

M.A. No. 35/2013 And M.A. No. 39/2013 in Application No. 91/2012

The Counsel appearing for parties will also be permitted to participate in the above meeting. Interim order granted by this Tribunal shall continue till next date of hearing.

Stand over to 6th March, 2013 for arguments.

Application No. 04 of 2013 (Suo Moto)

The Learned Counsel appearing for State submits that he would furnish the requisite details of the forest area, *Gair Mumkin Pahar* etc. that may attract the provisions of Aravalli Notification of MoEF, 1992 and the total area of the three Villages mentioned in the notice and also if any forest lands have been used for non-forest purposes with or without the permission of the State and with advance copy to the Learned Counsel appearing for the parties.

Stand over to 13th March, 2013.”

7. It is evident from the bare reading of the above Notification that construction of sheds, farm houses and other structures and activities stated therein cannot be carried on except with the prior permission of the authorities stated in the Notification.

8. In furtherance to our order dated 28th February, 2013, a meeting was held at the Haryana Bhawan which, we must note, brought some appreciable results. The counsel for the parties filed Minutes of the meeting held on 1st March, 2013 at Haryana Bhawan, New Delhi and in these minutes, interests of different applicants were examined. The Minutes are marked Ex.-C1 and

shall form part of this order. According to these Minutes, the intervening parties have stood by their statements and they would carry on no activities which would violate the Notification dated 7th May, 1992. They have also agreed not to carry on any activity which would be injurious to the environment or cause its degradation.

9. Certain practical difficulties have been put forward by the learned counsel appearing for the interveners. According to them, even if they just keep the marble slabs at the site in question and public amenities are not provided, it would cause serious prejudice to their rights as well as the environment. Similarly, they have also stated that some of them may be given time to close their respective activities as they have been carrying on their business for years now. For instance, the lease of the applicant carrying on the business of gas godown had expired on 31st March, 2010 and he would need six months' time to stop the activity and vacate the premises.

10. All the respondents, especially the Forest Department of the State of Haryana, the Municipal Corporation of Gurgaon and the Haryana State Pollution Control Board have erred in proper implementation of the provisions of the Notification. It is expected from these government functionaries that they are vigilant and take appropriate steps for execution of the Notifications issued by the Government of India. We are of the opinion that without their knowledge, it was practically impossible for such large number of marble traders to not only establish their shops/godowns but also

enjoy the power back-up facilities and be able to use their machineries. In addition to such vendors, one gas godown and one liquor vendor establishment has also been set up in the area in question. In view of the honest submissions made before this Tribunal, at this stage, we are not inclined to pass any coercive directions against them. However, in future if such incidents of not having requisite permission of the Ministry are brought forward, then these governmental agencies would be liable as well as responsible for such violations.

11. These are not the cases, which need to be determined on principles of equity or sustainable development. The activities and actions of interveners-applicants are opposed to law, inasmuch as they are undisputedly in violation of the Notification in question. Once they are opposed to the Notification that has been issued in exercise of the powers conferred under Sections 3(1) and 3(2) (v) of the Act and Rule 5(3) (d) of the Rules, then the question of balancing the carrying on of such activities with ecology of the area would be beyond the ambit of law. The Central Government, after inviting objections, had issued the Notification prohibiting carrying on of certain operations and processes, in the absence of prior approval of the Competent Authority. Thus, there is clear violation of the Notification which relates to protection of the environment and this would compel the Tribunal to pass appropriate orders. It is a fit case where the intervener-applicant should be directed to take certain steps to correct and make good, the damage that has been

caused to the environment of the area in question on the basis of the 'Polluter Pays' principle.

12. Having heard the learned counsel appearing for the parties and perusing the Minutes and with the consent of the learned counsel for the parties, we pass the following directions:

1. The Minutes of the meeting dated 1st March, 2013 shall be treated and be deemed to be part of this order as Ex.-C1.
2. The paragraphs recorded in Ex.-C1 shall be *mutatis mutandi* to the directions contained in this order and in the event of any conflict or violation, the order of the Tribunal shall prevail over the terms of Ex.-C1. In furtherance to Ex.-C1, the Committee shall ensure removal of all structures and machineries, including DG Sets, from the area in question.
3. None of the interveners or any other person would be permitted to construct any roads in the area covered under the Notification.
4. Nobody shall cut any tree or bush from the area in question. On the contrary, each of the non-applicants shall plant at least 50 trees in that area. Upon planting such trees, they shall ensure that the trees are looked after till they attain the sustained age and shall also inform the State of Haryana, the Chief Conservator of Forests and the Pollution Control Board, who shall, then conduct a joint survey of the area and report to the Tribunal if the terms of the present order have been complied with or not.

We also direct that the concerned parties shall make every possible effort to restore the area to its original natural condition.

We constitute a Committee consisting of the Environmental Engineer from the Haryana Pollution Control Board, the SDM of the concerned sub-division in district Gurgaon and a Senior Forest Officer of the district Gurgaon, who shall monitor the execution of this order.

5. All sheds of temporary or permanent nature, made of concrete or otherwise, shall be demolished by all the persons, including the interveners, within a period of two weeks from the date of pronouncement of this order. They shall not thereupon construct any temporary or permanent shed in the area in question.

6. No person, including the interveners, shall throw any debris or such other materials, in the area in question. As demonstrated from the photographs placed on record, debris has been thrown in the nearby forest area. The concerned interveners shall be responsible for the removal of the said debris from the entire area within two weeks from today.

7. We also hereby issue directions to the Chief Conservator of Forests and the State of Haryana to ensure that no structures or any other activity in violation to the Notification dated 7th May, 1992 is permitted in the area in question, except in accordance with law.

We also direct the Forest Department to ensure that no damage is caused, directly or indirectly, to the Forest Area in the Aravalli Hill Range.

8. If the shed structures are not removed/demolished and the debris accruing therefrom is not removed within the prescribed period, then in the said event, the Municipal Corporation of Gurgaon shall be entitled to and, in fact without fail, demolish such structures as well as remove the debris and recover the entire cost of this operation in equal shares from the interveners and the other defaulting persons located in that area.

9. In order to provide public amenities to the persons who are permitted to carry on their activities in the restricted manner as afore-indicated, all the interveners/applicants together shall be entitled to make and raise three pre-fabricated toilets in the area in question, which shall not exceed the size of 6 x 6 feet each. These toilets shall not be made of concrete or any other material, which is damaging to the environment, but will be made of fibre or any other eco-friendly material. They shall also ensure that they do not generate any dust particles by carrying on their activities and shall also be subject to other limitations as imposed in this regard.

The proper disposal of the discharge from these three toilets shall, in consultation with the concerned Corporation, be the exclusive responsibility of the interveners/applicants.

9. The applicant carrying on the business of gas cylinders, is hereby, granted three months' time to stop his activity and to clear the area in question. The existence of these gas cylinders cannot be termed as 'safe' due to their potential of causing fire and explosion hazards.

10. The applicant/intervener carrying on the liquor activity should wind up everything within four weeks from today, i.e. from the date of pronouncement. His licence is expiring on 31st March, 2013 and they have also voluntarily agreed to stop their activities in entirety as well as to remove those structures by that date.

11. The Committee constituted shall oversee that the order of the Tribunal is carried out in its true spirit and substance.

13. We have already noticed that it is a consented order and is primarily based upon Ex.-C1.

14. In the Minutes, Ex.-C1, some of the applicants have taken an objection that one hotel by the name of Pullman is being run from the same Khasra No. 420/8. In this regard, we have already passed an order on 6th March, 2013. Thus, it calls for no discussion at this stage.

15. We have not dealt with or determined whether the area in question is a forest area or not and what is the effect of the order passed by the High Court of Punjab and Haryana dated 04.09.2009. This order is without prejudice to the rights and contentions of either party in those proceedings.

16. Application No. 26/2013, 35/2013 and 38/2013 are for implement of the applicants. Since we have already heard the applicants consequently, all these applications are allowed.

17. As a result of this Application Nos. 91/2012 and M.A Nos. 26/2013, 27/2013, 38/2013, 39/2013, 35/2013 and 36/2013 stand disposed of as ordered.

18. However, the proceedings against M/s. Pullman Hotel, arising out of Application No. 91/2012, in *suo moto* application no. 4/2013 and R.A. No. 1/2013 would continue separately.

Hon'ble Mr. Justice Swatanter Kumar
(Chairperson)

Hon'ble Mr. Justice P. Jyothimani
(Judicial Member)

Hon'ble Dr. D.K. Agrawal
(Expert Member)

Hon'ble Dr.G.K. Pandey
(Expert Member)

Hon'ble Prof. A.R. Yousuf
(Expert Member)

New Delhi;
March 14, 2013