

(2015) 04 GUJ CK 0016

In the Gujarat High Court

Case No : Civil Application (For Joining Party) No. 4615 of 2015 in Writ Petition (PIL) No. 284 of 2014

Indian Hotels Company Limited

APPELLANT

Vs

Suo Motu

RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Citation : (2015) 5 FLT 489

Hon'ble Judges : Mr. Jayant Patel and Mr. G.B. Shah, JJ.

Bench : Division Bench

Advocate : Mrs V.D. Nanavati, Advocate, for the Appellants Nos. 1 and 2.; Government Pleader, for the Respondents Nos. 3 and 4; Mr A.S. Supehia, Advocate, for the Respondents No. 1; Mr Riddhesh Trivedi, Advocate, for the Respondents Nos. 13, 60, 62 and 64; Mr Tejas P. Satta, Advocate, for the Respondents Nos. 61 and 65; Ms R.V. Acharya, Advocate, for the Respondents Nos. 6 and 7

Final Decision : Disposed Off

Judgement

Mr. Jayant Patel, J. (Oral)—Draft amendments dated 10.04.2015 as well as 13.04.2015 are granted. Further affidavit dated 13.04.2015 filed on behalf of applicant No.1 is taken on record.

2. The present application has been preferred by the applicant in Writ Petition (PIL) No. 284 of 2014, whereby the applicant has prayed to permit the present applicants to be joined as party respondents in Writ Petition and it is further prayed that the respondent Nos. 1 to 11 be restrained from taking any coercive action including the sealing of the property in question.

3. We have heard Mr. S.I.Nanavati, learned Counsel for the applicants, Mr. Supehia, learned advocate for respondent No.1, Mr. Jayswal, learned AGP for respondent-State of Gujarat and other respondents, who are officials of the State of Gujarat and Mr. Ritesh Trivedi, learned advocate with Mr. Yagnik, learned advocate for the private respondents and Mr. Satta, learned advocate for the

private respondents.

4. The contentions raised on behalf of the applicant was that the area of land over which the hotel of the applicant is located outside of Forest area since the said area was denotified for exclusion from the forest and therefore, no N.O.C would be required for such purpose. Mr. Nanavati, learned Senior Advocate further contended that the communication dated 11.11.2011 issued by the Chief Conservator of Forest, Wild Life Circle, Junagadh shows that the area was already marked for the hotel tourism purpose since 1971 vide notification dated 04.09.1971, hence, N.O.C may not be required to be obtained.

5. However, upon the query raised by the Court to the reference made in the later part of the communication dated 14.02.2014, copy whereof is produced at annexure "E" on page 116 of the compilation addressed to the Chief Conservator of Forest, Mr. Nanavati had no answer. Further, he submitted that the application has been submitted for grant of clearance and N.O.C vide letter dated 14.11.2014 copy whereof is produced at annexure "F" on page 117 and he also submitted that the N.O.C had been applied and since the hotel is going on, the same may be allowed to be continued until the application is decided. He submitted that, application, if not made, can be made immediately by the applicant for clearance from National Board of Wildlife and the Tourism Corporation may be permitted to be impleaded as party and the direction may be issued by this Court to the Tourism Corporation as well as to the National Board of Wildlife through the Central Government which is already party before this Court and till then the seals may not be applied and prohibitory order may not be passed otherwise, the applicant would suffer irreparable loss and injury.

6. We may record that the main subject matter of the Writ Petition (PIL) No. 284 of 2014 is for preservation of the Wildlife (Protection Act, 1972) read with the Indian Forest Act and also Forest (Conservation Act, 1980), so as to, ensure that unauthorized commercial hospitality unit and the hotels be discontinued which is having adverse effect on the wild life in the respective area of Gir Wildlife Sanctuary by those who have not been granted N.O.C by the Forest Department or the competent authority. We may also record that this Court on 01.04.2015 had passed the following order:

"1. We have heard learned counsel Mr. Suphia, supporting the Suo Motu action, Mr. Prakash Jani, learned Additional Advocate General for all the State authorities including the Forest authorities, Mr. Shalin Mehta, learned senior counsel with Mr. Satta and learned counsel Mr. Yagnik with Mr. Trivedi, learned counsel for the respective applicants.

2. In the main petition, this Court, on 10/02/2015, had passed the following order:

1. This Court, when took up the matter by suo motu proceeding, vide order dated 25.09.2014, following order was passed -

1. An anonymous letter addressed to Hon"ble the Chief Justice of the High Court has been placed before us to consider whether suo motu cognizance of the allegations contained in the said letter be taken in public interest. In the letter, the anonymous complainant has stated that he is a naturalist and genuinely cares for the natural resources. However, he regretted not being able to reveal his identity. In the letter, the complainant has voiced serious concerns about the proposal of the State Government for setting up a new tourism zone at Chikhal Kuba near Jasadhar (Dhari Division) in the south-eastern region of the Gir Wild Life Sanctuary. He has opposed the State proposal on the ground that the Gir Wild Life Sanctuary is an extremely important and critical sanctuary and should not be viewed as a tourism destination at least at the cost of the wild life and the habitat in the sanctuary. The complainant has also raised issues about the current conditions of the wild life sanctuary, particularly, in the region where tourism is already developed.

2. Ordinarily, the Court would not take suo motu cognizance, particularly, on an anonymous letter. However, in the present case, the letter brings into focus certain important and sensitive issues of undeniably the most important wild life sanctuary in the State and one of the most important sanctuaries in the country. The lions are found world over only in this sanctuary outside of Africa and this sanctuary is the last reserve of Asiatic lions. Considering the importance of the issue we would like to hear the State Authorities as well as the Union Government.

3. Issue Notice returnable on 16.10.2014.

4. The respondents, in addition to meet with the averments contained in the said letter, may focus on following aspects:

(i) The present condition of the wild life sanctuary, particularly, bearing in mind the allegation of illegal construction of guest houses and hotels in and around the existing tourism zone. They shall also state whether there are private farm/property owners in or around the region who entertain guests collecting charges under any guise. Whether such activities are being carried on and if there are any rules, regulations and measures undertaken to control and regulate such activities and prevent any activities being illegally carried on.

(ii) Whether any environmental and the impact assessment on the ecology and habitat pursuant to setting up of new tourism zone carried out and if yes, the result thereof.

iii. The allegations of the complainant that the new tourism zone would choke a vital corridor of Asiatic lions which use the areas for to and fro movement between Rajula-Jafrabad-Nageshree region of the sanctuary and the coastal region of Una Taluka would also be replied.

(iv) The authority shall also state the stage and status of the proposal for setting up new tourism zone at Chikhal Kuba. Thereafter, the affidavit-in-reply on behalf

of respondent no.2, State of Gujarat, has been filed by the Under Secretary of the Forests & Environment Department.

1. When the matter was heard on 05.02.2015, this Court had passed the following order -

1. We have heard Mr.Supehia, learned counsel for the petitioner.

2. It prima facie appears that all the while the Conservator of Gir Wildlife Sanctuary has intimated to the office of the Collector that large number of persons have made illegal construction and they are running illegal hotels and no steps are taken.

3. Under these circumstances, we have also called upon Mr. Prakash Jani, learned Additional Advocate General to properly assist the Government for not only the larger interest of the wildlife of the wildlife sanctuary, and to take appropriate action against the illegal construction and illegal use of hotel, resulting into great adverse impact on the wildlife of the wildlife sanctuary.

4. Mr.Prakash Jani, learned Additional Advocate General states that he will look into the matter and report to the Court on 10.02.2015.

2. Today, we have further considered the matter and heard Mr.Supehia, learned counsel appearing for the petitioner and Mr.Prakash Jani, learned Additional Advocate General appearing with Mr. Dave, learned AGP appearing for the State Authorities.

3. As observed earlier, it prima facie appears from the affidavit-in-reply filed by the Secretary of the State Government that on rampant basis, in the nearby area of Wildlife Sanctuary of Gir Forest, illegal hotels, farm houses and commercial hospitalities units are being run by large number of people. The Chief Conservator of Forest, vide letter dated 17.06.2014, had communicated to the District Development Officer of Amreli District and such should be the position for other concerned District Collectorates, viz., District Collectorate, Junagadh as well as District Collectorate, Gir Somnath. However, it was not reported to this Court that whether any action is taken for discontinuing such activity or not. Today, Mr.Prakash Jani, learned Additional Advocate General has tendered the affidavit of Shri B.M.Virani, Deputy Collector, Veraval, District Gir-Somnath that such activities would be discontinued and they will be cancelled on permanent basis. It is also stated that the NA permission granted to such hoteliers would also be cancelled by the competent authority and it is prayed that three months time may be granted for such purpose.

4. As it appears from the above referred correspondence dated 17.06.2014, so far as Gir Somnath district is concerned, there are 49 illegal hotels, farm houses and commercial hospitality units whereas for Junagadh District, there are 14 units and for Amreli District, 2 units are mentioned. The correspondence is of June 2014 and the possibilities cannot be ruled out for increase in the number of such units in the aforesaid three districts.

5. In our view, it will be required for the authority to take the following actions -

1. Whether these units for which the reference is made in the aforesaid communication and the list is available from pages 122 to 125, such illegal activities of hotels, farm houses, commercial hospitality are being operated or not?

2. Whether any permission is obtained of any competent authority or not?

3. If it is found that the illegal hotels or farm houses or commercial hospitalities are being operated through these units for which no permission is granted, it will be required for the District Collector concerned within whose jurisdiction the revenue area is located to immediately stop the activity. The District Collector shall also ensure that such activities are discontinued until the person concerned, may be the owner or the manager or the tenant of the said unit, produces the permission of the competent authority.

4. Apart from the above, thereafter, if it is found that any condition of NA has been violated, appropriate action in accordance with law would also be required to be taken.

6. In order to undertake the aforesaid measures, we find that at the first instance, the panchnama of the respective units should be prepared so as to bring on record the position of the unit concerned on site and thereafter, if any breach of the stay order is made or there is any violation of the prohibitory order, the appropriate action including prosecution in accordance with law can be taken. We find it proper that until the respective officials of the State who may be concerned with the compliance of the NA condition or who may be concerned for maintaining the revenue administration and the panchayat administration as well as law and order in the respective districts are joined as party respondents, the enforcement of the order of this Court would not be complete.

7. In view of the aforesaid, the following order -

(1) District Collector, Junagadh, District Collector, Amreli, District Development Officer of all the three Districts, viz., Gir Somnath, Junagadh and Amreli as well as District Superintendent of Police of all the three Districts, viz., Gir Somnath, Junagadh and Amreli are directed to be impleaded as party respondents. The Chief Conservator of Forest, Sardarbaug, Junagadh, shall also be added as party respondent.

(2) It is further observed and directed that District Collector of each of the District, viz., Gir Somnath, Junagadh and Amreli as well as District Development Officer and District Superintendent of Police shall ensure that panchnama of the site of all the hotels or farm houses or commercial hospitality units, details whereof are mentioned at Annexure-III D, from pages 122 to 125 located in their respective districts or and also such unit of that type in the respective districts which might have started after June 14, are prepared by the Mamlatdar of the respective area under the supervision of the officer not below the rank of Deputy

Collector of the respective district and the report of the said panchnama shall be submitted on or before 5th March, 2015.

(3) The said officer of the rank of Deputy Collector who may be nominated by the District Collector of the respective district shall inquire about the aspects of whether any permission has been granted for running of hotel or resort or farm houses or any type of commercial hospitality unit by any competent authority and if the concerned person fails to produce the permission of the competent authority within three days to the said officer of the rank of Deputy Collector, the prohibitory order shall be passed for discontinuing the use of hotel or farm house or commercial hospitality unit, as the case may be. But the person concerned shall be entitled to shift the belongings to any other place, if he or she so desires. The copy of such prohibitory order shall be forwarded to the concerned Panchayat as well as to the District Superintendent of Police of the respective District, who in turn will ensure through the concerned police station that there is compliance to the prohibitory order passed by the officer of the rank of Deputy Collector.

(4) It would be open to any of the hotel or farm house or commercial hospitality unit to move this Court, if any prohibitory order is passed by the aforesaid officer in spite of the permission of the competent authority.

(5) It is further observed and clarified that the prohibitory order passed by the aforesaid officer or the pendency of this proceeding shall not operate as bar to any of the hotels, farm houses or commercial hospitality units to take appropriate steps for getting permission of the competent authority. However, if any permission is to be granted by the competent authority, the reporting thereof shall be made to the respective officer of the District of the rank of Deputy Collector who in turn shall submit in his report about the permission, if any granted from time to time.

8. S.O. to 05.03.2015 for reporting compliance and further orders.

9. Office shall forward the copy of the order to all the respondent concerned. In addition thereto, the learned Government Pleaders officer shall also communicate the order to the concerned officer.

3. It appears that thereafter, the report has been submitted and the same was taken on record vide order dated 05/03/2015, whereby, by way of compliance to the above-referred order dated 10/02/2015, seals were applied and the prohibitory orders were also passed to the hotels / commercial hospitality units (hereinafter referred to as the units for the sake of convenience) which could not produce NOC of the authorised department or the valid licence or there was breach of NOC or the licence by the hotel / commercial hospitality units. As on today, as per the said report, the seals are applied.

4. Pending the aforesaid, Civil Application No. 3371 of 2015 has been preferred by one Sukhsagar Gir Resort seeking prayer to quash and set aside the order

dated 03/03/2015 passed by the Sub Divisional Magistrate, Mendarda suspending the hotel licence of the applicant and it is prayed that the respondent authority be directed to allow hotel business for 20 rooms as per the NOC granted by the Forest Department. It is further prayed that licence be renewed etc.

4.1 Another application being Civil Application No. 3539 of 2015 has been preferred by one Narandas Bajaj seeking prayer to direct the respondent authority to remove attachment and seal on the premises of the applicant contending inter alia that the construction made is only for storage of mangoes and staff quarters and it is not used at all for running hotel or as commercial hospitality unit.

4.2 Civil Application No. 3540 of 2015 has been preferred by the applicant Hotel We Love Gir (Resort) seeking prayer to quash and set aside the order dated 03/03/2015 passed by the Sub Divisional Magistrate, Mendarda suspending the licence of the applicant firm and it is also prayed to direct the respondent authority to consider the case of the applicant for NOC from the Forest Department as well as for renewal of the licence afresh. In the very application, the Draft Amendment has been tendered and we find that considering the facts and circumstances of the case, the Draft Amendment can be granted. Hence, granted. In the contents of the Draft Amendment dated 18/03/2015, it has been mentioned inter alia that in spite of the abovereferred directions issued by this Court, the activities run by the following persons/companies have not been inspected. The details can be summarized as under:

4.2.1 Club Mahindra is having hotel building consisting of 64 rooms out of which, initially NOC was for 12 rooms and 06 cottages and thereafter, for 43 rooms. Accordingly, total NOC would be for 55 rooms and 06 cottages but the rooms exceeding 55 rooms i.e. additional 09 rooms are used for hotel purpose without there being NOC.

4.2.2 Gir Forest Resort is running hospitality unit where initially permission was for 04 rooms and additional NOC granted is for 30 rooms and 10 tents but the said premises is not verified.

4.2.3 Gir Jungle Lodge is having 38 rooms and 12 tents, but said unit is also not examined and verified.

4.2.4 Wild Woods Resorts is granted NOC for 205 rooms but in spite of the fact that construction is not made, said unit is also not examined.

4.2.5 Gateway Gir Forest is not having NOC but no action is taken for closure of the said unit.

4.2.6 Hotel Green Land initially had NOC for 04 rooms and 20 persons but the construction is of 17 rooms, beyond NOC and the said unit is also not examined and verified.

4.2.7 One Paying Guest House of Gokalbhai Purushottambhai Ratandhayara had NOC for 04 rooms to accommodate 12 persons but the construction is of 08 rooms for running hotel. The said unit is also not examined and verified.

4.2.8 Sinh Sadan is an unit undertaken by the Government for facility of Sinh Darsahn and as per the application, no NOC is taken from the Forest Department.

4.3 The grievance was raised on behalf of the said applicant that even while complying with the directions issued by this Court, there is no proper compliance and the Government officials have enforced the direction of this Court qua small businessmen or the private persons as against the mighty companies or the influential persons.

4.4 We may find it appropriate to observe and direct that barring the last unit i.e. Sinh Sadan which is owned by the Forest Department itself, if the concerned officers have not visited and verified the activities of the above-referred units mentioned at serial Nos.

4.2.1 to 4.2.7, the concerned Government officials and the authority shall immediately visit and to enforce the directions vide order dated 10/02/2015. The compliance report shall be submitted on or before 22/04/2015. If there is no compliance by the aforesaid outer limit, the Court may take a serious view of the matter for further orders against the officers concerned whose duty was and is to comply with the directions of this Court. Hence, ordered accordingly.

4.5 Another Civil Application No. 3807 of 2015 has been preferred by about 50 persons seeking direction to implead the Principal Secretary, Department of Tourism, Industries and Mines, Government of Gujarat and Managing Director, Tourism Corporation of Gujarat as party respondents and it is further prayed that the Principal Secretary, Department of Tourism and Managing Director be directed to consider the application of the applicants under Home Stay Establishment Policy and to grant permission to run Home Stay Unit up to 06 rooms.

4.6 Civil Application No. 3841 of 2015 has been preferred by one Bharatbhai Bhavchandbhai Parmar seeking prayer to implead as a party respondent and another application being Civil Application No. 3842 of 2015 has been preferred by the very applicant Bharatbhai Bhavchandbhai Parmar seeking prayer to quash and set aside the Notice dated 28/02/2015 issued by the Sub Divisional Magistrate, Veraval for the prohibitory order passed to discontinue the commercial hospitality unit without there being any licence granted by the competent authority or the Forest Department and even without getting permission for nonagricultural use. The grievance on the part of the applicant is that since they are small vendors running pan-bidi / tea shop they are sought to be evicted.

5. We may first consider the general aspect as to whether the units over which the seals are applied pursuant to the above-referred order dated 10/02/2015

should be allowed to be reopened or modified or not.

5.1 Mr. Prakash Jani, learned Additional Advocate General, for the State declared that the State has no objection if the units, which are having NOC, are permitted to utilize the premise/rooms strictly in accordance with the permission granted and the seals and prohibitory order be continued for the additional facility created by the respective unit holders beyond NOC granted by the Forest Department. He submitted that as per the State Government, suitable measures may be ordered to be undertaken as that of photographs and the videography may also be undertaken. The electricity lines may be discontinued for the additional facility and the rooms exceeding the NOC and every month the declaration should be filed by the unit holders that they have not utilized the additional rooms exceeding the NOC. It was submitted that a committee may be constituted to supervise the said activity comprising of the officers not below the rank of:

- i) Resident Deputy Collector being representative of the Collector,
- ii) Assistant Conservator of Forests being representative of the Forest Department,
- iii) Deputy Superintendent of Police being representative of District Superintendent of Police concerned,
- iv) Deputy District Development Officer being representative of District Development Officer and District Panchayats and
- v) one representative from the electricity company. He submitted that the declaration may be filed before the said committee and the said committee may also verify the genuineness of the declaration so made.

5.2 The learned counsel appearing for the private respondents, whose units are sealed by the Government officials pursuant to the abovereferred order passed by this Court, declared before the Court that they have no objection in complying with any of the conditions for segregation of unit or for any other measures as may be ordered by this Court. But it was submitted that, as such, the treatment may be given to all the persons irrespective of the fact whether after the order passed by this Court, the licences or NOC were cancelled or suspended or not.

6. Considering the facts and circumstances, it appears to us that even as per the abovereferred order dated 10/02/2015 passed by this Court, the essential purpose was to prohibit the illegal activity of running hotels and commercial hospitality units within the covered or prohibited area. If the licences were there, such activity was not to be curbed or prohibited unless such licences or NOC were found illegal or set aside. But, in the present case, it has been observed that a large number of persons / licence holders who were granted NOC, have extended or expanded their activity by construction of additional rooms and without there being NOC revised or without there being any further permission granted, were undertaking the activity of commercial hospitality unit or hotel. It

also appears that when the NOC is already granted, the utilization of the property to that extent can be permitted and such would appear to be in the larger public interest because if one is lawfully running the commercial hospitality unit or the hotel, the same should not be prohibited at this stage and since the ultimate beneficiaries are also the tourists or the public at large who may visit and utilize such facility which are shown as lawfully created. At the same time unlawful activity by any person, cannot be permitted. Hence, on the aforesaid aspect, following order is passed:

a) A committee shall be constituted in the respective districts by the concerned District Collector of the following persons:

i) Resident Deputy Collector / Deputy Collector;

ii) Assistant Conservator of Forests;

iii) Deputy Superintendent of Police;

iv) Deputy District Development Officer; and

v) Executive Engineer of Pashchim Gujarat Electricity Company Ltd.;

b) In the aforesaid committee, the Deputy Collector shall be the Chairman and the Collector shall provide the assistance to the said committee by nominating an officer not below the rank of Mamlatdar preferably working at District headquarter to work as a Member Secretary of the committee;

c) The committee shall be constituted and appropriate order shall be passed by the concerned Collector on or before 13th April 2015;

d) The committee of each respective districts namely Junagadh, Gir Somnath and Amreli shall examine the record and find out whether NOC was granted by the Forest Department for the respective unit holders or not. It will also be open to the concerned unit holders to produce the copy of the NOC, if granted by the Forest Department, within a period of 10 days from today before the concerned District Collector;

e) After the permission / NOC is produced of the Forest Department, within one week therefrom, the seals of the rooms shall be removed to the extent the permission is granted. But no seals shall be tampered with which are already applied over the rooms and the area for which no permission has been granted by the Forest Department;

f) The committee, at the cost of the State, will undertake the videography and the photography of the process for removal of the seal and separate data shall be maintained for continuation of the seal;

g) After the seals are removed over the rooms to the extent the permission is granted, the electric connection shall be segregated and the committee shall ensure with the help of the Executive Engineer of the electricity company that there is no supply of electricity over the rooms to which, the seals are already

applied or continued. The committee shall also be at liberty to ensure segregation of other essential services so as to make sure that there is no utilization of the premises over which the seals are continued for any use whatsoever;

h) The committee shall also be at liberty to exercise the incidental powers for ensuring the compliance of the directions of this Court dated 10/02/2015 read with the directions issued today;

6.1 The aforesaid process shall be preferably completed within a period of 04 weeks from today.

6.2 It is made clear that the aforesaid directions shall be applied in respect of all the unit holders including those in whose case, the licences or the NOC were suspended or cancelled but with the further observation that after restoration of the aforesaid facility for which the NOC has been granted, the concerned department of the Government including the Forest Department or the Revenue Department shall be at liberty to take action in accordance with law in the event of noticing any breach of the conditions of NOC or N.A. Permission and at that stage, the rights and contentions of the unit holder shall also remain open.

6.3 It is also observed and directed that all directions vide order dated 10/02/2015 shall apply to the additional units for which the visit and verification as ordered earlier is to be made by the concerned Government officers and it would be open to them to allow the units of the respective unit holders to the extent the permission is granted and they will apply the seal if not applied over the rooms or the construction made for which the NOC has not been granted by the Forest Department.

6.4 All interim applications being Civil Application Nos. 3371 of 2015, 3539 of 2015, 3807 of 2015 and 3540 of 2015 except Civil Application Nos. 3841 of 2015 and 3842 of 2015 shall stand disposed of accordingly with the further direction that if the unit holders are desirous to move any application for NOC to increase the facility or any other NOC as may be permissible in the law by the Forest Department, the same shall be considered by the respective department and the permission order may also be granted but such permission shall not be acted upon by the concerned unit holder unless copy of the said order is produced before the committee and in the record of this Court and within a period of 15 days therefrom, it would be open to the unit holders to move this Court for opening of the seal or modification of the present order if otherwise permissible in law.

6.5 In any case, no seal shall be further removed unless it is expressly so permitted by this Court for the units where the seals are already applied or may be applied pursuant to the earlier directions issued for visit and verification of the additional units as referred to in para 4.2 herein above.

6.6 So far as the applicants of Civil Application Nos. 3841 of 2015 and 3842 of

2015 are concerned, it appears that the notices are issued on the ground that they have occupied the Government land and are also running the units without there being any permission. The running of Tea stall or Pan galla shop would not essentially fall in the subject matter of the present litigation. Hence, no action may be taken against them pursuant to the order of this Court. However, if they have unauthorisedly occupied the Government land or the public road, it would be open for the concerned authority to take action against the said applicant in accordance with law under the Bombay Land Revenue Code or other relevant law. Hence, both the applications also shall stand disposed of.

6.7 The applicant of Civil Application No. 3539 of 2015 shall be at liberty to move the committee. The committee shall examine that as per the record submitted uptil now, the construction made is used for residence and for storage. The committee shall verify as to whether any other evidence for use of the premises as hospitality unit is there or not. In absence of the evidence as hotel or hospitality unit, within 10 days of the constitution of the committee, the seal applied shall be removed by simultaneous undertaking of photography and videography by the committee. The said application shall stand disposed of.

6.8 It is made clear that the present order has been passed by way of interim arrangement and the legality and validity of NOC or any construction made would be examined by the Court at a later stage, after due compliance of the present directions.

6.9 Stand over to 23rd April 2015 for reporting progress of the matter.

6.10 Direct service".

7. The aforesaid shows background of the matter. As per the earlier order dated 10.02.2015, this Court had directed the concerned authority to visit the places where illegal activities of hotels, farmhouse and commercial hospitality units were being operated by various persons. Thereafter, as reproduced in the above referred order dated 10.02.2015 at paragraph 8 it was directed that if the concerned person fails to produce permission of the competent authority within 3 days, the prohibitory order shall be passed for discontinuing the use of hotel or farm-house or commercial hospitality as the case may be. It was kept open to any hotel or farmhouse or commercial hospitality unit to move this Court if prohibitory order is passed by the aforesaid officer in spite of permission of the competent authority.

8. Thereafter, it was reported that, large number of hotels as well as commercial hospitality units had no license or the N.O.C of the Forest Department and about 50 and more such units were sealed. During the course of the hearing, the grievance was raised that there are about 8 units for which there were breach of conditions of N.O.C and also no proper N.O.C but in spite of the same the concerned officers have not taken any action. The details of such units were narrated at paragraphs 4.2.1 to 4.2.8 in the above referred order. This Court, baring the unit of the Government itself owned by the Forest Department at

paragraph 4.2.8 for the rest of the 7 units directed the officers to visit and to verify as to whether N.O.C is available to such units or not and it was also directed that the compliance shall be made of the order dated 10.02.2015 and the report shall be submitted on 2.04.2015. We may for the sake of ready reference record the relevant portion of the above referred order once again with a view to consider the application further. At paragraph 4.4 of the above referred order it was observed and directed as under:

" We may find it appropriate to observe and direct that barring the last unit i.e. Sinh Sadan which is owned by the Forest Department itself, if the concerned officers have not visited and verified the activities of the above-referred units mentioned at serial Nos. 4.2.1 to 4.2.7, the concerned Government officials and the authority shall immediately visit and to enforce the directions vide order dated 10.02.2015. The compliance report shall be submitted on or before 22.04.2015. If there is no compliance by the aforesaid outer limit, the Court may take a serious view of the matter for further orders against the officers concerned whose duty was and is to comply with the directions of this Court. Hence, ordered accordingly".

9. It is in this light of the aforesaid direction issued by this Court, the present application has been preferred. It may also be recorded that, by the draft amendment the copy of the communication dated 10.04.2015 issued by the Sub Divisional Magistrate, Mendarda addressed to the applicant is produced on record and the applicant has been called upon to produce the copy of N.O.C failing which the hotel is to be closed or appropriate action has to be taken. In response to the same, the applicants have preferred the present application.

10. The only question which may be required to be examined at this stage would be whether the applicant is having N.O.C of the Forest Department for any hotel in the forest area and/or in the wildlife sanctuary of Gir Forest or not.

11. In the letter dated 14.02.2014 upon which the reliance has been placed by the applicant at paragraph 2, it has been mentioned as under:

"In this regard it is to intimate that there is a lease agreement took place on 07/12/1994 for the period of 20 years between the Tourism Corporation of Gujarat Ltd and the Indian Hotels Company Limited for Lion Safari Lodge. Now, the said lease agreement will expire on 07/12/2014. After that, lease agreement has to be renewed but the existing unit falls under the area notified as Gir Sanctuary vide Government of Gujarat Notification No.GHKH/97/WLP/660/62848/ P Dt 18.09.1965 and also notified as Reserve Forests vide Government of Gujarat Notification No. AKH/180/74/FLD/1672/8822/P Dt 06.11.1974. As provided in the Wildlife (Conservation) Act, 1980, now onwards the user agency has to obtain prior approval and clearance from the National Board of wildlife. Only after receipt of the clearance from the National Board of Wild Life, application for granting N.O.C can be permitted.

(Emphasis supplied)

12. The aforesaid shows two aspects. One is that, even as per the applicant N.O.C was required and it has been so applied for N.O.C of the Forest Department. The second is that as per the Chief Conservator of Forest, N.O.C can be processed only after the approval and clearance by the National Board of Wildlife under the Wildlife (Conservation) Act, 1980. Not only that, but, the communication dated 14.11.2014 copy whereof is produced at annexure "F" by the Tourism Corporation of Gujarat Ltd., to the Chief Conservator of Forest shows that the permission was required and the Tourism Corporation has conveyed to the Chief Conservator of Forest to grant permission to continue the hotel till the permission is granted from the Forest Department. In view of the aforesaid, it would not lie in the mouth of the applicant to contend that they are exempted from getting N.O.C or that N.O.C would not be required for running the hotel.

13. The attempt to contend that earlier vide notification dated 04.09.1971, the area was exempted from the forest area, even if considered, the same would not make any difference for the requirement to get N.O.C on the part of the applicant because it has applied for N.O.C since required and as per the Chief Conservator of Forest also such N.O.C can be granted after clearance and approval by the National Board of Wildlife under the Wildlife (Conservation) Act, 1980. The aforesaid shows that the N.O.C is required for running the hotel in the Wildlife Sanctuary area by the applicant and as on today the applicant is not having any N.O.C.

14. If the aforesaid factual aspects are examined in light of the compliance to the order dated 10.02.2015 passed by this Court read with order dated 01.04.2015 passed by this Court, the applicant would be situated on the same position with those persons who are running hotel or commercial hospitality units or farm-house without there being any N.O.C from the competent authority or the Forest Department as the case may be. Pursuant to the above referred directions issued by this Court, in case of about more than 50 units, the prohibitory orders are passed and the seals were also applied by the concerned officers. On the contrary, as recorded in the above referred order, grievance was raised on behalf of the other persons who had no N.O.C and the seals were applied, to the effect that the State Officials in the above referred order dated 10.02.2015 are making discriminatory treatment inasmuch as against small unit holders or a person having unit, but no reach at the higher level, were meted with the fate of prohibitory order and of the sealing of the units pursuant to the order of this Court whereas certain persons and the unit holders who are in influential position have been left out and the order is not enforced against them though they are similarly situated. In respect of 7 units including the applicant herein, this Court had directed for enforcement of the order dated 10.02.2015 and the compliance is to be reported. The applicant being one of such unit having no N.O.C, cannot claim a different treatment than those against whom the order dated 10.02.2015 has been already enforced merely because the applicant is a lessee of a Tourism Corporation which is a company floated by Government of Gujarat. Merely because the applicant is a chain of hotels in the leading hotel business, a

different treatment cannot be claimed nor provided by the Court in enforcement of the order. In our view, the Court order dated 10.02.2015 has to be enforced and should be enforced to all who are not having N.O.C and in spite of the same running hotel or commercial hospitality units. The simple reason is that everybody is equal so far as enforcement of the law and enforcement of order of Court and nobody is above the law in a democratic set up.

15. The attempt to contend by the learned applicant that as per the provisions of the Act, if the land is owned by the Central Government and has been allotted to the State Government and the State Government had given to the Tourism Corporation of Gujarat a Government Company, who in turn has given on lease basis to the applicant and therefore the N.O.C would not be required, cannot be countenance for two reasons, one is that, it is not a Central Government itself managing the unit which has been constructed over the land of the Central Government and the second is that the activity of the Government company by use of the land for commercial hospitality unit or hotel cannot be equated with the sovereign power of the state for preservation of the forest or preservation of the Wildlife under the Wildlife (Conservation) Act, 1980. A Tourism Corporation which is a Gujarat Tourism Corporation, at the most can be termed as a commercial venture of the State Government which cannot be equated with the sovereign power of the state for preservation of the forest and the wildlife as per the statutory provision. On the contrary, the sovereign power would demand the enforcement of the provisions of the Forest Act as well as the Wildlife (Conservation) Act. Any commercial activity unless it is expressly exempted or unless for which express permission is granted, will have the same procedure as is to be followed by the other citizens, who is desirous to open a hotel or a commercial hospitality unit in a Wildlife Sanctuary or in a forest area. In any case, the applicant is the lessee of the Tourism Corporation of Gujarat. Hence, the contention cannot be countenance. If such a contention is accepted for the sake of consideration, the resultant effect would be that a citizen or an ordinary person undertaking the activity of starting commercial hospitality unit or hotel will be required to follow the procedure for getting N.O.C, whereas, a Government Company, though similarly situated in the tourism activity on commercial basis will not be required to apply for N.O.C. In our view, such can hardly be countenanced, nor can such be entertained in a welfare state.

16. We may record that the main matter is pending, wherein, the question of validity of the N.O.C if any granted is yet to be examined and therefore whether the applicant is entitled to have the N.O.C and whether N.O.C could be granted to the applicant or not are the aspects which may be examined at the later stage. But, as the present order is limited to prohibiting the illegal activity by the persons having no N.O.C of the Forest Department or the competent authority, we have recorded the present order to that extent.

17. In view of the above, the applicant is permitted to be impleaded as party respondent in the main petition at his cost, but, the other prayer for prohibiting

the concerned officers from taking action of discontinuing the use of the hotel or of sealing premises can not be granted,hence not granted. The application is disposed off. Mr. Dhawan M. Jayswal, learned Assistant Government Pleader, shall intimate the order immediately to the concerned officer.