

(2011) 05 RAJ CK 0170

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1332 of 2001

Khyalial Suwalka and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 2(i)

Citation : (2012) 1 RLW 116

Hon'ble Judges : Arun Mishra, C.J.; Kailash Chandra Joshi, J

Bench : Division Bench

Advocate : Manish Shishodia in W.P. No. 1332/2001, Tribhuvan Gupta in W.P. No. 4440, 2009 and Rajendra Kumar Razdan, Petitioner-in-Person in W.P. No. 1421/2001, for the Appellant; R.L. Jangid, Additional Advocate General with H.S. Bishnoi and Ashok Chhangani and M.S. Singhvi with Hemant Dutt for Respondent No. 6 in W.P. No. 1332/2001, for the Respondent

Judgement

Arun Mishra, C.J.—By way of this common order, three writ petitions are being disposed of. In the Writ Petition No. 4440/2009, the petitioner has prayed for quashment of the order dated 6.4.2009 (Annex. P/15 to the petition). The prayer has been made not to disturb the possession of the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited.

2. The facts in short giving rise to the present petitions indicate that initially the land was transferred to the Forest Department of survey No. 1, 4, 8, 10, 11, 13, 15, 26/9, 27/9, in area 18.83 hectare and unsettled area 1.08 hectare, total area 19.91 hectare and it was recorded as ownership of the Forest Department in the corresponding Khasras which is not disputed. Later on it appears that an order was passed on 11.8.1998 by the State Government reviewing the order dated 21.3.1998 passed in favour of the Forest Department and the allotment was cancelled. Again the matter was taken up suo motu in review and the order dated 12.1.2001 (Annex. P/6 to W.P. No. 4440/2009) was passed, thereby decision was taken to allot 40 bighas land to M/s. Standard Minerals and Chemicals Pvt. Limited for establishment of hotel and country resort cancelling

the allotment made in favour of the Forest Department. Pursuant thereof, order dated 25.1.2001 (Annex. P/7 to W.P. No. 4440/2009) was issued granting the said very land in favour of M/s. Standard Minerals and Chemicals Pvt. Limited. Thereafter a lease-deed was also executed.

3. Assailing the aforesaid order, two Writ Petitions bearing No. 1332/2001 and 1421/2001 were preferred, in which prayer was made to quash the orders dated 12.1.2001 and 25.1.2001. These two writ petitions are also being disposed of by this order alongwith W.P. No. 4440/2009.

4. Later on, the State Government cancelled the orders dated 12.1.2001 and 25.1.2001 of the allotment made in favour of the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited vide order dated 6.2.2006 (Annex. P/12 to W.P. No. 4440/2009). Further the State Government passed the order dated 6.4.2009 upholding the order dated 21.3.1998 of allotment to the Forest Department and withdrew the order dated 25.1.2001 whereby the allotment made in favour of the Forest Department was cancelled.

5. It is submitted by the learned counsel appearing on behalf of the petitioner in Writ Petition No. 4440/2009 that certain area approximately 3 hectares of land out of the survey No. 1 was not allotted to the Forest Department, was also included in the grant made in favour of the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited, thus, the grant could not have been cancelled in toto as the entire area was not given to the Forest Department and it ought to have been maintained with the aforesaid area. The learned counsel also submitted that once the cancellation order of allotment made to the petitioner was itself cancelled, thereafter it was not appropriate for the State Government to pass the order dated 6.4.2009 (Annex. P/15 to W.P. No. 4440/2009) restoring the order passed in favour of the Forest Department during the pendency of the two writ petitions which were filed earlier. The learned counsel also submitted that the order dated 6.4.2009 is illegal as it was not the forest land as such the allotment of the land to the Forest Department was not appropriate and it was open to the State Government to allot the land in favour of the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited. Earlier it was agricultural land and it could not at all be said to be forest land.

6. It was submitted by the learned counsel appearing on behalf of the respondents that the same very land which was given to the Forest Department was allotted in favour of the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited. It is apparent from the order of grant that this land was the same land which was given to the Forest Department and out of that some part was allotted to the petitioner for construction of hotel and resort and as per the opinion expressed by the Expert committee appointed by this Court, no such construction activity can be permitted in the area in question. The learned counsel for the respondents have relied upon the decision of the Apex Court in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, that once the land is in the forest area, the word "forest" has to be given a wider

meaning as per the Forest Conservation Act, 1980, thus, it was not open to the State Government to review the order and to make the grant in favour of the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited for the purpose of construction of hotel and resort considering the importance of the area and ecological balance as there is a game sanctuary, bird sanctuary, nesting ground for the migratory birds. The area is of national importance.

7. After hearing the learned counsel for the parties, we are of the opinion that there was absolutely no reason for the State Government to review and pass order dated 12.1.2001 and to make the grant in favour of the petitioner of Writ Petition No. 4440/2009 (M/s. Standard Minerals and Chemicals Pvt. Limited) for the purpose of construction of hotel and resort. Such exercise was illegal as is apparent from the record which has been produced, considering the same and the importance of the area, we find that no allotment could have been made in the area in question for the construction of hotel and resort. In the opinion of the committee constituted by this court also, no such activity can be permitted in the area in question.

8. This court vide order dated 5.9.2003 passed in D.B. Civil Writ Petition No. 1332/2001 constituted a Committee of four persons to submit the report. Two reports have been submitted. One report had been submitted by M/s. Sunita Narain, Director Centre for Science and Environment, New Delhi and Mr. R.K. Khetrapal, Deputy Conservator of Forest (North), Department of Forest, Udaipur. The Committee has opined in the report that as per the policy of the Ministry of Environment and Forests, lands falling within 10 km of the boundary of national parks and sanctuaries should be notified as eco fragile zones under the Environment Protection Act. The resort in question is located on an island, which is approximately 500 m. from the boundary of notified wildlife sanctuary. The Committee has recommended that proposed resort at Bhatwada should not be given clearance and its license be cancelled. The Jaisamand lake is in a precarious condition and every effort should be made urgently to restore the water body and a plan for restoration of the lake has to be drawn up. Following are the recommendations made by the committee consisting of Sunita Narain and R.K. Khetrapal-

On the issue of the conservation mandate of the land an examination of the decisions of the Hon'ble Supreme Court show the need to review the decision of the State Government to cancel the forest lease. It is clear that the area is under tree cover, the land had been transferred to the forest department and mutation had been done in favour of the forest department. Therefore, in these circumstances, simply arguing that the decision to transfer the land was questionable and illegal is clearly not enough to justify its transfer from forest to non-forest category, without invoking the provisions of the Forest Conservation Act.

The second issue concerns the conservation mandate of areas close to protected areas - sanctuaries and national parks. The policy statement of the Ministry of

Environment and Forests directs that "lands falling within 10 km of the boundary of national parks and sanctuaries should be notified as eco fragile zones under the Environment Protection Act (EPA)." This policy is based on by EPA rule 5 sub-rule 5(viii) and (x). It is also clear that the resort in question is located on an island, which is approximately 500 m. from the boundary of notified wildlife sanctuary.

The decision of the revenue minister on 12.1.2001, also includes a misrepresentation of this conservation policy. Furthermore, the revenue secretary of the state had also reported to the minister on the decision taken internally that the "islands which have in their vicinity reserved or protected lands, should not be allotted for establishment of tourism units." However, the order dated 12.1.2001, this was misinterpreted as: In the reserved and protected forests near the islands, no allotment should be made for tourism units.

Therefore, permission for the resort would be a violation of the above policy and directive of Central and state government on the protection of areas surrounding protected and reserved lands.

It is not possible to adequately assess the environmental problems from the project document. The issue is the seriousness of the proponent to implement the provisions of the document to implement the provisions of the document and the abilities of the enforcement and regulatory institutions to ensure that the provisions are implemented effectively.

It is clear from the inspection of the existing resort that much needs to be done in this respect. The only reason there is no evident environmental problem is because the area is still sparsely used. The existing resort is working much below capacity and resources are still under-utilisation as per its own plans. But in spite of this there are evident signs of water stress in the region even with the existing low capacity utilisation. Therefore, any additional stress would be certainly detrimental to the ecosystem and is not advisable.

In these circumstances, the committee would recommend that the proposed resort at Bhatwada should not be given clearance and would also recommend that the terms of the existing resort should be (sic).

The committee would also request the Hon"ble Court to take up the matter with the state government so that a plan for the restoration of the lake can be drawn up. It is essential that the withdrawal of water, which is far over-exceeding the capacity of the lake, must be stopped and an alternative plan for the lake's recharge and management drawn up.

9. Another report had been submitted by Dr. R. Sarin and Mr. Mahesh Sharma and in their report, they have opined that disturbance would lead to destruction of the eco system. A well designed eco tourism plan is required to protect the eco system and bio diversity of the area. No tourism activity should be permitted in future unless and until comprehensive eco tourism plan is prepared by the

local government authority on short term and long term basis for protecting the natural wilderness and for the overall improvement of the area. At the same time, the Committee has suggested certain measures to counter act the negative impact of coming up of the resort. In the opinion of the Committee, there would be negative impact of coming up of the resort. It has suggested certain measures if resort is permitted to come up which have been detailed in the report. It has been observed that resort to take the responsibility to protect the environment including flora and fauna and at the same time, the Committee has also observed that the Government authorities should impose ban on future hotel/resort projects proposed to come up in the area around Jaisamand Lake to avoid coming up of a series of projects. The relevant portion of the report of the Committee consisting of Dr. R. Sarin and Mr. Mahesh Sharma including the measures suggested by them is quoted below:-

Jaisamand Lake and Island lake ecosystem are ecologically indispensable in maintaining the natural resource of water and suitable habitat conditions for the local flora and fauna as well as of Jaisamand Wild Life Sanctuary. The tribal population is dependent upon the resources from this ecosystem.

The island ecosystem provides green cover which stabilizes the steep slopes of island and helps maintain the balance of the ecosystem. The steepness of the slope has made the islands fragile and human disturbance would lead to destruction of the ecosystem.

Observation of the present resort indicates that a well-designed ecotourism plan is required to protect the ecosystem and biodiversity of the area. This plan should be based on carrying capacity of the area and the restriction on human activity through ecotourism principles to nullify the impact of tourism on natural integrity and to promote the on natural integrity and to promote the welfare of the local inhabitants in and around the Jaisamand Lake so as to implement the tourism policy of the State.

No tourism activity should be permitted in future unless and until comprehensive ecotourism plan is prepared by the local government authority on a short term and long-term basis for protecting the natural wilderness and for the overall improvement of the area.

Pleasures Required to counteract the negative impact of coming up of the Resort.

The resort should take care of the whole island and the environment to conserve the ecology of the area and taking into consideration the fragile and delicate ecosystem. In fact, it should act in a positive manner to upgrade the environment and habitation, for which the following measures must be taken-

1. A botanical garden should be developed by the resort on its area and a variety of trees and shrubs should be planted and taken care of over the whole of island whether it comes under the area of resort or not.
2. Employment should be compulsorily given to the native inhabitants of the

island in order to improve their economic condition.

3. Full fledged Sewage treatment plant should be provided consisting of primary, secondary and tertiary treatment units.

4. The treatment system should be made above the ground with a peripheral drainage system and the treated waste water should be utilized for gardening with in the premises of the project.

5. It is recommended that, as far as possible, natural environment at the island should be preserved so that the tourists get the feeling of living in a natural village rather than in an artificially built hotel/resort.

6. For the solid waste generated from the resort vermi-composting should be provided.

7. The resort should keep a permanent environmental manager for the maintenance, operation of STP and for the conservation of natural surroundings.

8. The unit should take certain measures to enhance the soil stability so that the present rate of soil erosion is reduced.

9. The resort should continuously monitor the quality of lake water at regular interval and submit report of the same to the concerned authorities.

10. During the establishment of the resort, utmost care should be taken not to dispose any waste into the lake.

11. Effective measures should be provided for reducing the noise levels and also to reduce air emissions in accordance with the norms of Environment Protection Rules, 1986.

12. An appropriate committee of experts from concerned Deptt. e.g. PWD, Revenue, Tourism, Forest & Pollution Control Board etc. should be constituted to monitor the construction works.

In conclusion, it can be said that if the project is allowed to come up, the resort should take the responsibility to preserve the environment including the flora and fauna of the region and shall act as its "protector". On evaluating the existing status of environmental quality of the region in terms of physico-chemical/biological parameters of lake water and the general sanitation conditions in catchment area, it is concluded that local human activities have already led to its deterioration. Therefore, due to proposed hotel/resort, there would be marginal impact and if the recommended measures are implemented the proposed project would have insignificant impact.

It is further added that the existing project should implement/execute the recommended measures immediately so as to restore the residual impact. In case of proposed project, a time bound commitment should be made for implementation of measures suggested during all the phases of the project namely pre construction, during construction and operational.

Action by the State Government-

The concerned Govt. authorities should impose a ban on all future hotel/resort projects proposed to come up in the area around Jaisamand Lake to avoid coming up of a series of projects based on the above in future and also directions be given to all the concerned authorities by the Hon'ble Court regarding the above.

10. It is apparent from the above report and the measures suggested by the Committee of Dr. Sarin and Mr. Mahesh Sharma so as to counteract the negative impact of coming up of the resort, we cannot permit disturbance in the environment at the island and then to ask the hotel/resort to preserve environment at the island as far as possible. We cannot leave the matter to the resort for permanent maintenance, operation of STP and for the conservation of natural surroundings. The matter of soil stability could also not be left to the unit as suggested by the Committee of Dr. Sarin and Mr. Mahesh Sharma. It could also not be left to the resort to continuously monitor the quality of lake water at regular interval nor it can be left to the resort not to dispose any waste into the lake. Noise level and air emissions could also not be left at the mercy of hotel and resort to come up in the area. The measures suggested so as to counteract the negative impact indicate that the Members, namely, Dr. Sarin and Mr. Mahesh Sharma have realized negative impact, but at the same time they have recommended only the project in question to come up not any future project. As such, considering the negative impact and the measures involved in that, we are of the considered opinion that the report submitted by Dr. Sunita Narain and Mr. R.K. Khetrapal is not at all dented by the report submitted by Dr. Sarin and Mr. Mahesh Kumar, rather it buttress the conclusion that no such activity should be permitted in the area in question.

11. Apart from that we find that once the land was allotted to the Forest Department considering the importance of the area and it was entered in the name of the Forest Department, the provisions of the Forest Conservation Act, 1980 were clearly attracted. The word "forest" has been defined in Section 2 of the Forest Conservation Act, 1980. The Hon'ble Apex Court has considered the aforesaid aspect in the case of T.N. Godavarman Thirumulkpad vs. Union of India & Ors. (supra). The relevant para 4 of the aforesaid judgment is quoted hereunder:-

4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the

dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matter connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this court in *Ambica Quarry Works vs. State of Gujarat*, *Rural Litigation and Entitlement Kendra vs. State of U.P.* and recently in the order dated 29.11.1996 (*Supreme Court Monitoring Committee vs. Mussoorie Dehradun Development Authority*). The earlier decision of this Court in *State of Bihar vs. Banshi Ram Modi* has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

12. In view of the aforesaid, once the land was recorded in the ownership of the Forest Department after its allotment, it was not open to the State Government without permission of the Central Government to allot the land for the non-forest purpose of hotel and resort activity. Apart from that, we find that passing of the order dated 12.1.2001 indicates that the circumstances in which and the manner and method in which it was passed was not proper exercise of powers. We leave the matter at that.

13. The State Government has taken the ultimate decision to keep the area as it is with the Forest Department and consequently the order of allotment in favour of the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited does not survive.

14. Coming to the submission made by the learned counsel for the petitioner in Writ Petition No. 4440/2009 that some part of the land of survey No. 1 was different than that allotted to the Forest Department, we find that when the area in question is of so much importance and is surrounded by game sanctuary, bird sanctuary, nesting ground for the migratory birds and in the opinion of the expert committee appointed by this court no hotel or resort activity should be permitted in the area in question, in such matter even if any portion of the land of survey No. 1 was not the land allotted to the Forest Department, then also no such construction activity is to be permitted in the area in question, which, is also the opinion of the committee, which has submitted a detailed report after duly considering the various aspects of the matter.

15. Coming to the submission that cancellation order of grant of petitioner was

cancelled, hence the impugned order dated 6.4.2009 (Annex. P/15) passed in favour of the Forest Department was bad in law, we are of the considered opinion that cancellation of grant which was made to Forest Department was illegal, consequently, the land could not have been allotted to the petitioner M/s. Standard Minerals and Chemicals Pvt. Limited. Even otherwise, in our opinion, no such activity could have been permitted in the area as such we hold that the entire grant made to the petitioner vide orders dated 12.1.2001 and 25.1.2001 to be illegal and outcome of high handed arbitrary exercise of power. The petitioner is not entitled to claim any part of the land under such illegal order.

16. With regard to the submission of the learned counsel for the petitioner in W.P. No. 4440/2009 that there is another hotel in the vicinity on the private land which is not the forest land, the State Government has to consider the propriety of such an activity. The report of the committee has to be taken into consideration by the State Government in this regard. We direct State Government to take measures as for conservation of lake as suggested in reports of Ms. Sunita Narain and Shri R.K. Khetrapal. With the observations/directions made above, W.P. No. 1332/2001 and 1421/2001 are allowed and W.P. No. 4440/2009 is hereby dismissed. No costs.