

(2018) 04 UK CK 0053

In the Uttarakhand High Court

Case No : Special Appeal No. 208 of 2018 With Delay Condonation Application
No. 4224 of 2018

NAGAR PALIKA BHOWALI

APPELLANT

Vs

SECRETARY DEPARTMENT OF FOREST UTTARAKHAND
DEHRADUN

RESPONDENT

Date of Decision : 13-04-2018

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Constitution of India, — Article 226

Citation : (2018) 04 UK CK 0053

Hon'ble Judges : K.M. JOSEPH, C.J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Navnish Negi, Vikas Pande

Final Decision : Dismissed

Judgement

K.M. JOSEPH, C.J.Â Â Â

1. There is a delay of 8 days in filing the appeal.Â After hearing the learned counsel for the parties, we are of the view that the delay is to be condoned.Â Accordingly, the delay will stand condoned and the Application for condonation of delay will stand allowed.Â Â

2. Appellant is the writ petitioner, which is a Local Body.Â The writ petition was filed seeking a mandamus to respondent No. 5 (apparently, it is a mistake; it is stated to be respondent No. 4), who is the Divisional Forest Officer, Nainital, not to stop the writ petitioner from disposing of solid waste at the Niglat Comp no. 2, Bhowali, Nainital.Â Â

3. Very briefly put, the case of the appellant is as follows:

i. The Bhowali Municipality was established in the year 1916.Â The collected waste is being disposed of in Dumpsite, which is used as trenching ground

situated at Niglat Compartment no. 2, Bhowali, Nainital. It is duly permitted by the

then Divisional Forest Officer, Nainital, vide order dated 13.09.1940. In this regard, the following was the Resolution, which was passed on 30.08.1940:

From,

Dr. P.L. Sah, D.

President,

Notified Area Committee,

Bhowali.

To,

The Divisional Forest Officer,

Nainital Division,

Nainital.

Dated Aug. 30,

1940

No. 5049/PH of 1940

Subject

Sir,

I have the honour to enclose a copy of committee resolution no. 13 dated August 24, 1940, together with a copy of the plan of old Tonga Parao, above cart road, in Niglat Comp. no. 2 proposed to be used as a trenching ground for town rubbish or refuse during the rains when neither it can be burnt nor used in the incinerators. There are no trees on this plot and the Notified Area may very kindly be allowed to use it as such.

I have the honour to be,

Sir,

Your most obedient servant.

Sd/-

President

Encl. 1â??

ii. Thereafter, order dated 13.09.1940 followed, which reads as follows:

â??The Divisional Forest Officer, Nainital Forest Division

No. 548 dated Nainital, September 13, 1940

To

The President, A Notified Area Committee,

Bhowali.

Subject: A A A A A A A A A A Trenching ground.

Memorandum

Reference your No. 5049/PH dated 30.8.1940. A A

A I have no objection to your using the Old Tonga Parao in Ninglat ct.2 as a trenching ground, but I regret the plot cannot be disforested or otherwise transferred.

Divisional Forest Officer, Nainital Forest Division.

Copy forwarded to R.O. Bhowali for information.â??

iii. It is the complaint of the appellant that, now, the authorities have restrained the municipal employees from disposing of the solid waste at the site. A It is alleged to be an ignorance of the permission granted to the Municipal Board, which is

using it as a trenching ground for more than 70 years. A The approach road to the trenching site is being dug-out by the forest officers to restrain the municipal authorities from further using the allotted land as trenching ground. A Appellant

made Annexure No. 4 representation and, not finding any response, he has approached this Court.

4. The learned Single Judge has dismissed the writ petition noticing that forest land cannot be used for non-forest purposes, except on prior approval of the Central Government and that this approval evidently has not been taken. A Therefore,

the writ petition was dismissed.

5. We have heard Mr. Navnish Negi, learned counsel for the appellant and Mr. Vikas Pande, learned Standing Counsel for the State. A A

6. Mr. Navnish Negi, learned counsel for the appellant, would complain that it is after obtaining due permission, which dates back to as long as 70 yearsâ?? ago,

that the appellant Local Body has been dumping the waste in the forest.Â Mr.

Vikas Pande, learned Standing Counsel, would take us through the actual resolution to contend that it was sought to be used during rainy season.Â Â

7. Section 2 of the Forest (Conservation) Act, 1980 reads as follows:

â??2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose. - 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 â?"Â

(i) that any reserved forest (within the meaning of the expression â??reserved forestâ?? in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;Â

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;Â

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

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.â??

8. It may be true that what the Section contemplates is Government authority, by any order, permitting use of forest land for non-forest purposes.Â It may be equally true that the appellant is armed with a permission by the State Forest

Officer, which was granted in the year 1940.Â But, at the same time, we must notice two aspects.Â Firstly, the appellant has approached this Court on the strength of a permission.Â Permission is essentially a licence.Â A licence, in law,

can be revoked, except in certain contingencies.Â A licence does not create interest in land.Â Secondly, Section 2 of the Forest (Conservation) Act, 1980, inter alia, taboos using of any forest land for non-forest purpose.Â Having regard to

the Explanation in Section 2, expanding the scope of the word â??non-forest purposeâ?, there can be no doubt that the operation for which the writ of mandamus is sought would fall within non-forest operations.Â Sitting in discretionary

jurisdiction under Article 226, we are inclined to decline jurisdiction to the appellant even if the appellant lay store by the permission having regard to the purpose of provisions of the Forest (Conservation) Act, 1980.Â Therefore, we

would

agree with the dismissal of the writ petition.Â Â

9. Accordingly, the appeal will stand dismissed without any order as to costs.Â But, we make it clear that, if advised, this will not stand in the way of the appellant taking steps in accordance with law for the purpose of securing permission

from the Central Government under the Forest (Conservation) Act, 1980 for the purpose for which the writ petition was filed. Â Â

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