

(2022) 11 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1813 Of 2022

Raj Kumar

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 01-11-2022

Acts Referred:

Citation : (2022) 11 SHI CK 0001

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : Ajay Sharma, Atharv Sharma, Raju Ram Rahi

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has sought quashing and setting aside of communication dated 02.03.2022, Annexure P-2, issued by respondent No.3, whereby the said respondent has refused to take further action with respect to issuance of demarcation/marketing orders of Khair trees standing over the land granted as Nautor in Jeehan beat of Nadaun Range of Hamirpur Forest Division (hereinafter referred to as Jeehan beat for brevity), in view of pendency of certain Civil Writ Petitions before this Court.

2. The case of the petitioner, briefly stated, is that he is a Forest Contractor. Jeehan beat was open under ten- year felling programme (for short, "TYFP") during the year 2020-21. Total 38 land owners of Jeehan beat authorised the petitioner to fell from their respective lands Khair trees under TYFP after seeking requisite permissions. As per petitioner, demarcation and marking etc., of trees could not be done in 2020-21. Respondent No.2, vide communication dated 07.12.2021 granted extension for demarcation of land, marking/felling of Khair trees during 2021-22 in favour of petitioner in terms of para 8(i) of GoHP order dated 10.09.2002.

3. As against the aforesaid facts, the grievance of petitioner is that respondent No.3 has rejected the case of petitioner for demarcation of land, marking/felling of Khair trees in Jeehan Beat during 2021-22 despite order of extension granted by respondent No.2 in that behalf. It is further submitted that rejection by respondent No.3 is on the basis of pendency of some writ petitions before this Court, which have nothing to do with the case of petitioner.

4. Respondents have contested the claim of petitioner on the grounds; firstly, that the petitioner had not applied for felling of Khair trees during 2020-21 and as such his application during the succeeding year 2021-22 and its consideration would amount to deviation under TYFP, which was not permissible in law and secondly, the entry "Khudro Drakhtan Malkiyat Sarkar" in respect of lands for which petitioner had sought permission, had been wrongly deleted.

5. We have heard Mr. Ajay Sharma, Senior Advocate, for the petitioner and Mr. Raju Ram Rahi, Deputy Advocate General, for the respondents and have also gone through the entire record carefully.

6. It is not in dispute that TYFP was approved for Hamirpur Forest Division for the years 2019-20 to 2028-29. The Jeehan beat was opened under the aforesaid TYFP during the year 2020-21.

7. The case of petitioner is that he had applied for demarcation and marking of trees for the purpose of felling from private lands in Jeehan beat during 2020-21. On the other hand, respondents have come up with a specific plea in their reply that petitioner had not made any such application during 2020-21, but had applied during 2021-22. The factum of date of application by petitioner assumes significance, in view of the fact that Hon'ble Supreme Court has passed an order in I.A. No. 2370 in Writ Petition (Civil) No. 202 of 1995, titled as T.N. Godavarman Thirumalpad vs. Union of India, to the following effect:-

"iv) . The High Court of Himachal Pradesh passed an order on 28.05.2008 in regard to felling of trees on private lands which came within the definition of forest land. The order was challenged both by the land owners and contractors on the one side and the State Government on the other. In view of the controversy, we referred the matter to the Central Empowered Committee. The CEC after considering the relevant issues in detail has filed a report. The recommendations and suggestions made by CEC are acceptable to all the parties before us. The CEC has recommended that the order passed by this Court on 08.05.2009 in I.A. 2370 of 2008 should be extended to the felling of Khair trees on privately owned non- forest areas also subject to the following conditions:-

i) no felling of trees, including of Khair trees, from the forest area will be permissible in violation of the Hon'ble Supreme Court Order dated 12.12.1996;

ii) no deviation from the ten-year felling programme fixed by the Forest Department in accordance with the provisions of the Land Preservation Act, 1978 will be permissible ;

iii) no Katha/Kutch manufacturing unit will be permitted to be established/allowed to operate or to expand its capacity in violation of Hon'ble Supreme Court orders dated 29/30.10.2022. (Copy Annexed as Annexure R-V.”

8. Thus, no deviation is permissible under TYFP. Petitioner has not been able to place on record any document evidencing submission of his application during relevant year 2020-21. Even after hearing the matter on 15.10.2012, this Court at the time of dictating judgment had felt the need of clarification on this factual aspect and had sought such clarification from the petitioner. Vide order dated 18.10.2022, on the request of learned counsel for the petitioner, the matter was adjourned to 20.10.2022 to enable him to verify said fact. Despite adjournment the fact situation, from the side of petitioner, remained uncertain.

9. The petitioner has attempted to draw strength to his case by placing reliance on the extension order for demarcation of land and marking/felling of trees granted in his favour by respondent No.2 vide communication dated 7.12.2021. It is contended that the date of application would be irrelevant when Respondent No.2 in exercise of powers vested in him by law had granted extension of time to the petitioner.

10. Such extension, however, has to be looked at from the point of view of it being compliant with the orders passed by Hon'ble Supreme Court in T. N. Godavarman Thirumalpad case supra. The matter of extension in grant of permission to demarcate the land, marking/felling of trees is prescribed under Clause-8 of GoHP Order No. FFE-B- 1(3)4/99 dated 10th September, 2002, which reads as under:

“8. In all cases (other than those mentioned in para 6 & 7 of this order) where demarcation of land and marking of trees have not been done during the prescribed year in accordance with the approved ten years felling programme permission to demarcate the land, marking and felling of trees may be granted beyond prescribed year of felling by the:-

- i) The Principal Chief Conservator of Forests upto one year;
- ii) The State Government upto two years subject to its being satisfied that there exists any of the following reasons for granting such permission namely:-
 - (a) If there is dispute over the title or ownership or possession of land on the production of a documentary evidence such as orders/certificate of the Court etc; or
 - (b) If the area is in the ten years felling programme but the same has not been shown therein the certificate from the Divisional Forest Officer concerned; or
 - (c) If the demarcation of land could not be made due to non-availability of staff on furnishing a certificate from the Sub- Divisional Officer (Civil) or the Divisional Forest Officer concerned as the case may be to this effect; or
 - (d) If the process of demarcation of land, marking and felling of trees has not

been completed due to a natural calamity; or

(e) If the settlement of rates of trees has not been arrived at during the prescribed year of felling, or

(f) if there is any other reason beyond the control of the land owner.

Provided that the State Government may allow felling of the trees upto two years and six months after the prescribed year of felling in the snow bund areas.”

11. From the plain reading of aforesaid Clause, it is clear that extension in permission to demarcate the land, marking/felling of trees under TYFP can be granted on fulfillment of one or more criterion fixed vide sub-clauses (a) to (f) of Clause 8 supra. Viewed in light of above-mentioned provision, the case of petitioner does not appear to fall in any of them. Except for the warrant of aforesaid Clause, the extension is not permissible and if allowed in violation of prescribed parameters, will definitely amount to deviation.

12. Even otherwise, the benefit of extension could be availed by petitioner only if he is able to satisfy the Court that his initial application was submitted to the prescribed authority within the financial year 2020-21. Extension will come to play only if there is an application for demarcation, marking/felling of trees within the year prescribed under the TYFP. Extension cannot be in isolation. It has to be linked to the original application. In case, the original application is not made within the prescribed period of TYFP, the extension, if any, granted during subsequent years will again be a deviation.

13. Noticeably, the respondents have also not made specific mention as to what was the date of submission of original application of petitioner. Objection raised on behalf of the respondents is in following terms:-

“2. That further Jeehan Beat was opened under approved ten year felling program during 2020-21 and petitioner submitted his case in 2021-22 and hence the case falls under category of deviation. Hon'ble Apex Court vide its order dated 30.10.2009 passed in IA No.2370 in WP(C) No. 202/1995 and SLP(C) 26329/2008 in T.N. Godavarman vs. Union of India & Ors (Annexure R-I) has ordered that no deviation from the 10 year felling program fixed by the Forest Deptt. In accordance with the provisions of Land Preservation Act, 1978 will be permissible.”

14. Petitioner has placed on record a communication dated 05.10.2021 from respondent No.2 to the Chief Conservator of Forests, Hamirpur, the relevant extract of which reads as under:-

“2. With regard to subject matter, it is also intimated that as per approved Ten Year Felling Programme of Hamirpur Division for the years 2019-20 to 2028-2029, the above said Jihan Beat was open for felling of trees from private lands under LPA, 1978 during the previous year 2020-21. The representation gives to understand that the case has not been processed during the prescribed year of

felling i.e.2020-21 for grant of permission for felling of trees from the concerned private land. As such, it needs to be processed in accordance with the provisions of Para 8(i) of GoHP Order No. FFE-B-A(3)4/99 dated 10.09.2002 with detailed justification. While processing the case seeking extension for demarcation of land, marking and felling of trees beyond prescribed year, it may be ensured that no such trees standing in the are granted under Nautor is marked for felling for which the price has not been paid by the applicant owner as provided in Para-2.1.10 of Technical Order No.670 dated 13.08.1993.”

15. Thus, the date of filing of original application by petitioner seeking permission for demarcation, marking and felling of trees remains uncertain. In this background, it is not understandable as to how the case of petitioner has remained undecided till date. The impugned communication dated 02.03.2022 (Annexure P-2) from respondent No.3 to respondent No.2 cannot be construed as rejection of case of petitioner for the reasons firstly that Respondent No.3 had refused to take further action only on the grounds of pendency of some Civil Writ Petitions before this Court and secondly the issue relating to extension granted to petitioner and its validity was not considered at all.

16. In this view of the matter, fresh orders are required to be passed by the competent authority in the case of petitioner, keeping in view the observations made hereinabove as also the exact date of original application of the petitioner. Needless to say, that the objection as to wrong deletion of entry of “Khudro Drakhtan Malkiyat Sarkar” raised on behalf of the respondents appear to be misplaced. The fact remains that such entry was deleted before 1996. Thereafter, the revenue records are bereft of such entries. The respondents are to act in accordance with the existing revenue entries. Further, in the absence of any challenge to said entries, in accordance with law, the respondent cannot sit over the lawful revenue entries, which carry presumption of truth.

17. The petition is accordingly disposed of with the direction to the respondents to take a fresh decision on the grievance of the petitioner in terms of observations made hereinabove. Needful shall be done by the competent authority within four weeks from the date of passing of this judgment. Pending application(s), if any, also stand disposed of.