
(2002) 10 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No's. 298, 408 and 410 of 2002

Smt. Usha Sood, Shri Ashok Sood and Smt. Divya Sood

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Himachal Pradesh Land Preservation Act, 1978 — Section 7

Citation : (2002) 3 ShimLC 205

Hon'ble Judges : W.A. Shishak, C.J;A.K. Goel, J

Bench : Division Bench

Advocate : Kapil Dev Sood, for the Appellant; Ram Murti Bisht, Assistant A.G. (Now D.A.G.) for Respondent No. 1 and Neel Kamal Sood, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—Since common questions of law and fact are involved in all these writ petitions, as such, these are being taken up together and we propose to dispose them of by a single judgment.

2. Petitioners in all these three cases applied to the Division Manager of Respondent No. 2 Corporation for sale of Forest Produce i.e. standing trees, which are standing on their respective lands. Reason given by them was that the area in question is open for silvicultural marking and felling under ten years felling programme as framed by the Forest Department of the State Government and had been approved by the latter. Ten years felling programme is prepared as per provisions of H.P. Land Preservation Act, 1978, hereinafter referred to as "the Act of 1978". Section 7 of the Act of 1978 regulates the aforesaid felling programme etc.

3. Petitioners came under ten years felling programme formulated under the Act of 1978.

4. Petitioners approached the Divisional Manager of Respondent No. 2 by

furnishing requisite applications complete in all respects. After receipt of the applications from the Petitioners, Divisional Manager forwarded their cases to the Divisional Forest Officer, Theog Forest Division at Theog. With a view to get the trees marked and area demarcated vide Annexure P-2, Divisional Forest Officer, Theog forwarded the case to the Sub-Divisional Officer (Civil), Tehsil Theog, District Shimla as under:

Subject.-Private sale case of land owners of Kiari beat of Theog Range through Shri Sudhir Kumar Sood, S.P.A. demarcation/markings thereof.

Sir,

The Divisional Manager, Forest Working Division, Shimla has forwarded the private sale case of the land owners of Kiari beat of Theog Range to this office for demarcation of lands and marking of trees. As "per approved ten years felling programme of Theog Forest Division, Kiari beat is open for private sale during 2001-02. You are therefore, requested to please scrutinize all the documents including revenue papers of land owners at your level carefully and if the same are found in order, may depute competent revenue officer not below the rank of Naib-Tehsildar for getting the private lands demarcated in the presence of Range Officer concerned, Pradhan Gram Panchayat concerned, Land Owners/S.P.A. and Nominee of agent/HPSEC, not below the rank of Assistant Manager, the demarcation adjoining to the Government Forests maybe carried out by the Tehsildar concerned in the presence of Assistant Conservator of Forests.

You are also requested to issue suitable instructions to the demarcating officers to follow the prescribed procedure for carrying out the demarcation of lands in accordance with the rules/instructions framed under various Revenue Acts. The provision of H.P. Land Preservation Act, 1978 and H.P. Forest Produce (Regulation of Trade) Act, 1982 and the rules framed thereof, be also kept in view. It may be ensured that no demarcation of these Khasra Nos. be carried out where mutation has been done under the H.P. Land Reforms and Tenancy Act, 1972, during the year, 1972 to 1976, in view of the letter received from Deputy Commissioner, Shimla (Copy enclosed for ready reference). Demarcation of lands/ khasra Nos. recorded as Barani be also not carried out. After demarcation of Private land/ khasra Nos. necessary demarcation papers along with map showing details be enclosed. The demarcating officer should record the certificate to this effect along with his/their dated signatures and seal of the office and to ensure that demarcation of private lands is carried out meticulously keeping in view all relevant rules/instructions available on the subject as the sole responsibility will rest upon the revenue authorities only for correctness demarcation. The details of land owners is as under:

-----	Sr.	No.	Name of land owner	Khasra No.	Area	-----
1.	S/Sh.	Ashok Sood	563/131,	S/o Karam Das Sood	564/131/2	60
2.	Divya Sood,	D/o Ashok Sood	562/131/1	40	3.	Usha Sood,
						D/o Prithi Chand Sood

The above demarcation/marketing orders are subject to the condition that felling can only be allowed after receipt of clarification regarding not paying land revenue by land owners and does not violate the Hon'ble Supreme Court order dated 12/12/1996 passed in CWP No. 202/95 dated 12/12/1996. All the papers pertaining to this case are enclosed.

Sd/- Divisional Forest Officer, Forest Division Theog.

Encls: As above.

Endst. No. 4276-79, dated Theog, the 2.11.2001-2002.

Copy along with copy of the guidelines and recording certificates forwarded to:

1. The Range Forest Officer, Theog for information and necessary action. He is directed to get the private lands demarcated from the competent revenue authorities in his presence. After demarcation the boundary of each privately owned khasra No. be marked on ground either by erecting boundary pillars or by belting the trees on the boundary polling with details thereof be shown in the demarcation report. It may be ensured that all the marked trees bear distinct hammer impression and are properly Khudan marked. The marking/enumeration list of trees in each khasra No. be prepared specie-wise and class-wise. The marking of trees be carried out silviculturally as per instructions available on the subject either by you or by Block Officer concerned. In case the marking is carried out by the Block Officer, 100% checking be carried out by him and necessary certificate to this effect be recorded. If the private Khasra Nos. are adjoining to the forest lands the marking of trees be carried out by the R.O. concerned. The demarcation of land and marking of trees be done only after due scrutiny of revenue documents and after due observation of rules/instructions available on the subject. The provision of H.P. Land Preservation Act, 1978 and Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 and rules framed thereunder be also kept in view. The private sale cases be processed in the light of orders passed in CWP No. 202/1995 dated 12.12-1996 by the Hon'ble Supreme Court of India in case T.N. Godavarman Thirumulakpad v. Union of India and Ors., all the documents i.e. demarcation report enumeration/marketing be got signed from the all concerned such as revenue authorities, forest officials, land owners SP As and H.P. SFC authorities. All concerned must put their signatures with dates and seal of the office. The private sale case be sent to this office complete in all respect and recording all necessary certificates.

2. The Divisional Manager HPSFC, Shimla w.r.t. his office letter No. 18196 dated 18/8/2001 for information and necessary action. He is requested to depute his representative not below the rank of A.M. to associate himself in the process of demarcation of land and enumeration/marketing of trees.

3. Shri Ashok Sharma HPFS ACF Theog Division for information and necessary action. He is directed to inspect the demarcation/ enumeration and marking and

submit report regarding correctness thereof in case the private khasra Nos. are adjoining to the Government land and the demarcation be attested by him.

4. Shri Sudhir Kumar Sood SPA for information and necessary action. He is directed to get the lands demarcated and enumeration and marking of trees carried out expeditiously. He is also requested to get the all codal formalities complete, failing which case papers for felling of trees will not be entertained in this office .and he will be personally responsible.

Sd/- Divisional Forest Officer, Theog Forest Division, Theog.

5. Despite Annexure P-2, when no action was taken by the authorities concerned as required under law in processing applications, Petitioners approached the Principal Chief Conservator of Forests Shimla, Divisional Forest Officer Theog and the Divisional Manager, H.P. State Forest Corporation Shimla by communication, Annexure P-3 dated 10.3.2002.

6. Divisional Manager of Respondent No. 2, at its Forest Working Division, Shimla-2, vide Annexure P-4 returned the cases of each one of the Petitioners to their attorney along with copy of letter from the Divisional Forest Officer, Theog to Divisional Manager, Forest Working Division, Shimla.

7. It may be pointed out here that so far area in question is concerned, number of different species of trees are standing on it. However, forest authorities allowed about 10% of the total number of trees standing over the land in question, whereas rest of the trees are kept intact at the spot besides following other measures as required under law.

8. Petitioners further case is that earlier property belonged to Mahasu Trading Company, a registered partnership firm. As far back as in 1991, when the area was open for felling under ten years felling programme in 1988-89, they had approached the authorities by offering the trees to them for conversion etc. Again almost an identical situation cropped up, so CWP No. 380 of 1991 was filed by this firm. It was disposed of, in the following terms:

Consequently, we direct the State Government to give the necessary felling permission within a month and further direct Respondent No. 2 i.e. the Himachal Pradesh State Forest Corporation that after the trees are felled, to take over the said trees and dispose them of in accordance with the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 and the Rules framed there under.

The writ petition is disposed of accordingly. However, we make no order as to costs.

9. Earlier in the year 1981 area came under ten years felling programme and the firm through its owner approached the authorities, though belatedly, yet permission was allowed.

10. In the aforesaid background all these three writ petitions have been filed for the grant of following relief(s):

(a) Direct the Respondents to grant the felling permission under the Ten Years Felling Programme and to take over the trees and dispose of the same in accordance with the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 and the rules framed there under during the ten years felling programme before 31.3.2002 or such extended time by granting the deviation permission to the Petitioner of the Ten Years felling programme beyond 31.3.2002,

(b) Quash the order Annexure P-4 and direct the Respondents to consider the case of the Petitioner under Ten Years Felling Programme of silviculture marking and felling of trees afresh after granting the deviation permission,

(c) Direct the production of all the relevant records.

(d) allow any other relief to which the Petitioner is found entitled to, and

(e) allow cost of the petition in favour of the Petitioner.

11. Respondents when put to notice, contested and resisted the claim of the Petitioners.

12. So far State is concerned according to it, in terms of the directions issued by the Supreme Court of India in the case of T.N. Godavarman Thirumulkpad v. Union of India and Ors., (1997) 2 Supreme Court Cases 267, none of the Petitioners is entitled to any relief. Per Respondent No. 1/State, compact area of all the three Petitioners works out more than five hectares, therefore, none of them is entitled to any relief. It is also claimed by this Respondent that the area is forest, as such, no felling thereon can be allowed in favour of any one of the three Petitioners.

13. Further, with a view to support its case, Respondent No. 1 placed reliance on the report dated 15.2.1997 of the Expert Committee constituted by the State Government. Copy of this report is attached with its reply by Respondent No. 1.

14. For ready reference, relevant portion of this report is extracted here in below:

As the private lands to be considered as forests under State ownership, it was decided that a compact block of wooded land above 5 hac. in extent will be "Forest" for the purpose of Forest (Conservation) Act, 1980.

As to the identification of area which were earlier forests but stand degraded, denuded or cleared, the Committee was of the view that this will entail field surveys and inspection by the Forest Staff and it is likely to take considerable time.

In the Forest Department large number of plantations have been raised under various developmental scheme which are well identified and their record is available with the Department. As regards plantation on private lands this is to be assessed. This will also require field inspections and will take time.

This meeting ended with the vote of thanks to the Chair.

15. Respondent No. 1 has thus prayed for dismissal of the writ petitions as according to it, none of the Petitioners is entitled to any relief as prayed for in these writ petitions.

16. Respondent No. 2 has also filed its reply in all the three writ petitions. According to this Respondent, none of the Petitioners have right to maintain the writ petition against it as they have alternate efficacious remedy available to them. In addition to this, while admitting receipt of applications from the Petitioners and those having been forwarded to the authorities concerned, Respondent No. 2 has stated that the cases have been returned by the authorities.

17. Petitioners while filing rejoinder have submitted that so far directions issued in the case of T.N. Godavarman Thirumulkpad v. Union of India and Ors., is concerned, there is nothing in- the decision that effects the prayer made by each one of them. Petitioners further claim that it had allowed similarly situated persons to get the trees felled. Thus, they have prayed for allowing of the writ petitions.

18. Before proceeding further in the matter, it may be appropriate to note the purpose of allowing silviculture felling as per the felling programme framed by the Forest Department and approved by the State Government under law. The purpose is to remove the trees or timber which are required to be weeded out for the growth, development, maintenance, upkeep and preservation together with further plantation in the area. In case, this exercise as per felling programme is not undertaken, it is likely to hamper the development and future growth of the forest wealth.

19. With a view to ensure that there is no reckless or unscientific felling undertaken, felling programme is prepared by the authorities as per law and under the Act of 1978 as also for managing and operating the forest working plans. To achieve this object, the lands in case of private land owners, ten years felling programme is prepared and after every ten years, area is opened for felling. Since forest trade in the State of Himachal Pradesh has been nationalized as per provisions of H.P. Forest Produce (Regulation of Trade) Act, 1982 and the rules framed there under, Respondent No. 2 (which is a wholly Government owned company) as an agent of the State Government undertakes felling, conversion and sale of the timber of the trees of land owners, like Petitioners in the present case.

20. Mr. Sood, learned Counsel for the Petitioners submitted that action of Respondents in returning the cases of all the three Petitioners, is not only illegal but also contrary to law i.e. Act of 1978 and ten years felling programme formulated under the said Act. He also placed reliance in this behalf on the decision of the Supreme Court of India in the case of T.N. Godavarman. According to him, even while applying this decision of the Supreme Court of India still permission cannot be declined to his clients by the Respondents. Thus,

according to him, both the Respondents must entertain the applications of his clients and thereafter to proceed with their cases in accordance with law. Since the felling period is over, therefore, Respondent No. 1 further needs to be commanded to allow deviation. Reason for such prayer made by Mr. Sood is, that his clients had approached the authorities well within time and it was only on account of acts of omission and commission on their part to have delayed the matter and instead of following the letter of law, including the directions of the Supreme Court of India, they have returned the cases without any justifiable cause.

21. On the other hand, all these pleas have been controverted by Mr. Bisht, learned Assistant Advocate General. He submitted that because of classification of land as forest and keeping in view the provisions of Forest Conservation Act, 1980 and the mandate of the Supreme Court of India in the case of T.N. Godavarman, these writ petitions deserve to be dismissed. According to him, compact area in case of all the three Petitioners works out more than five hectares, therefore, in the light of the report of the Expert Committee as constituted by the State Government and its recommendation having been accepted, no relief can be granted to the Petitioners.

22. In all these three cases, arguments were heard and judgment was reserved on 29.7.2002. During the course of dictating judgment, it transpired that at the time of hearing of the writ petitions, learned Counsel for the parties were at variance regarding extent of the area of each of the Petitioners. In all three cases, parties were called upon to place material on record regarding the area. Needful was done by them. Whether the area in case of each of the Petitioners is five hectares or less, now gets into pale of insignificance. Reason being that Respondent No. 1 has filed affidavit which clearly indicates that the area is less than five hectares in case of each one of the Petitioners. However, they have reiterated their stand that since the land is classified as forests in the settlement record, therefore, Petitioners are not entitled to any relief.

23. In this behalf, it may also be noted that Petitioners have also filed supplementary affidavit in this case. Amongst others, they have placed reliance on a communication from the Financial Commissioner-cum-Secretary (Revenue) to the Government of Himachal Pradesh bearing No. S. Rev. B.F.(8)-6/97, dated 22 April, 2000.

24. Admittedly, the firm which earlier owned the area (which is the subject matter in all these three writ petitions) had approached this Court in civil writ petition No. 380 of 1991. The said writ petition was disposed of as noted hereinabove. Even prior to that in the year 1981, when area came under ten year felling programme, necessary permission was accorded by the authorities in accordance with law and in our view rightly. Reason being that grant of such permission is warranted by law i.e. H.R Land Preservation Act, 1978 and the rules, as well as programme(s) framed there under.

25. So far direction issued in the case of T.N. Godavarman by the Supreme Court of India is concerned, restrictions imposed against felling of trees nowhere provides that felling of trees is banned for ever. In this behalf, we are of the view that prevention and protection of forest wealth as also the protection of environment, ecology, flora and fauna have to be ensured. But developmental aspect cannot to be totally over-looked. Both have to go hand in hand and are necessary for sustained development and growth. If trees which need to be salvaged, weeded out and are allowed to remain in the forest, it will not only hamper further growth of forests, but is likely to cause hazards like forest fires etc. Depending upon the facts of each case, half broken, top broken or otherwise dead and other trees need to be permitted to be felled/salvaged so that in place of such felled trees, plantation etc. is carried out. To achieve this object, working plans for forests are formulated. Similarly, felling programmes are framed like ten years felling programme under the Act of 1978. Thus, we are of the view that felling could not be denied to the Petitioners when the area came under ten years felling programme subject of course to their complying with other requirements of law by the Respondents after following mandate of the Supreme Court of India (supra).

26. So far plea of Respondent No. 1 that compact area of the entire block of the land of all the three Petitioners being more than five hectares and the permission cannot be allowed to them is concerned, it has been raised to be simply rejected. Reason being that report of the Expert Committee which was appointed as per directions of the Supreme Court of India, by the State Government and its recommendations having been accepted, nowhere speaks of compact area of the land of the applicants like Petitioners jointly/ collectively. If this was the intention, there was nothing that prohibited the committee to have said so. Nothing can be read down in the report, operative portion of which has been extracted hereinabove.

27. By no stretch of imagination while interpreting the said report, it can be said that the compact area of all the contiguous land owners have to be considered and then if the area works out to be more than five hectares collectively, permission is to be declined.

28. In our view, the area of each of the land owner like individual Petitioner in these writ petitions has to be taken note of. Keeping in view the stand of Respondent No. 1 in its supplementary affidavit, the area in case of each one of the Petitioners is less than five hectares. As such, plea raised by Respondents is hereby rejected.

29. Plea of Respondent-State that no permission can be accorded for felling of trees in case of each one of the Petitioners under ten years felling programme also cannot be accepted. Reason being that there is no legal embargo either under the Act of 1978, or rules/regulations framed there under as also in terms of the mandate of the Supreme Court of India in the case referred to above.

30. No other point is urged.

31. In view of the aforesaid discussion, all these three writ petitions are allowed and consequently, Respondent No. 1/State is directed to proceed further in the matter in case of each one of the Petitioners and then process her/his case keeping in view what has been said in this judgment as well as the mandate of the Supreme Court of India in the case of T.N. Godavarman (supra), and further to allow deviation also, because the period of ten year felling programme is over for no fault on the part of the Petitioners.

Costs on the parties.