
(2009) 09 P&H CK 0008
In the Punjab And Haryana At Chandigarh

Vijay Bansal and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Punjab Land Preservation Act, 1900 — Section 3, 4

Citation : (2009) 2 ILR (P&H) 503 : (2009) 156 PLR 568

Hon'ble Judges : T.S. Thakur, C.J.;Surya Kant, J

Bench : Division Bench

Judgement

Surya Kant, J.—This order shall dispose of Civil Misc. No. 12170 and 13502 of 2009 moved by two different applicants, seeking clarification of our order dated May 15, 2009, whereby CWP No. 20134 of 2004 [Vijay Bansal and Ors. v. State of Haryana and Ors.] and CWP No. 4758 of 2008 [Chandi Mandir Stone Crushers Consumers Company v State of Haryana and Ors.] were disposed of.

CM No. 12170 of 2009.

This application has been moved by the State of Haryana through its Forest Department for clarification of the order dated 15th May, 2009 with regard to Issue No. 1 namely, "the legal impact of notifications issued under Sections 3 and 4 of the Punjab Land Preservation Act, 1900" [in short PLPA].

2. Vide order dated 15th May, 2009, we disposed of a Public Interest Litigation seeking investigation into indiscriminate and callous mining operations in the lower Shivalik Hills in District Panchkula, as also a writ petition, challenging the Central Government notification dated 14th September, 2006 which has mandated "pre-environmental clearance" before permitting the mining operations. The whole gamut of. controversy was divided into six issues including Issue No. 1as to "what is the legal impact of the notification issued under Sections 3, 4 or 5 of the PLPA, 1900?"

3. Relying upon notification dated 28.11.1997 issued by the Forest Department, Government of Haryana u/s 4 of the PLPA, 1900 and following the dictum of the

Hon"ble Supreme Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, and M.C. Mehta v Union of India, J.T. 2004 S.C. 214, we have concluded as follows in respect of Issue No. 1:

The only inescapable conclusion would be that if directions against cutting of trees or timber etc. have been issued u/s 4 in respect of an area or a part thereof notified for the purpose of "conservation of sub-soil water" or "prevention of erosion" u/s 3 of the PLPA, such an area being "forest land" for the purposes of 1927 and 1980 Acts, can not be used for "non-forest purposes" save as permitted by the Central Govt. We, however, hasten to add that the aforestated prohibition against use for "non-forest purposes" does not ipso-facto apply to the entire area forming part of the notification u/s 3 of the PLPA.

4. The Forest Department, Government of Haryana now seeks clarification of our conclusion drawn against Issue No. 1 inter-alia, pointing out that:

[i] the total forest area of the State, at present, is 1,54,706 hectares, including 12,527.94 hectares of the land notified under Sections 4 and 5 of the PLPA, 1900, which is duly recorded as "forest land" in the records of the Forest Department;

[ii] the "forest land" notified under Sections 4 and 5 of the PLPA, 1900 earlier contained 11,513 hectares only and this fact was duly mentioned in the affidavit dated 8.12.1996 filed by the then Chief Conservator of Forests, Haryana before the Hon"ble Supreme Court in CWP No. 171 of 1996 [Environmental Awareness Forum v State of J&K and Ors.].

[iii] the State Government later on wanted to exclude the aforestated privately owned land from the "forest area" and moved IA No. 839 of 2002 to this effect before the Hon"ble Supreme Court in Writ Petition [Civil] No. 202 of 1995 [T.N. Godavarman Thirumulkpad v Union of India and Ors.], but the same having been dismissed while issuing directions in M.C. Mehta's case (supra), the Forest Department has always treated and maintained the aforestated area measuring 11513 hectares [now increased to 12527.94 hectares] as the "forest land";

[iv] all the lands/areas notified u/s 4 or 5 of the PLPA are not "forest lands". Only those lands where clearing, breaking up or cultivation has been prohibited, are being treated as "forest lands";

[v] where the notifications under Sections 4 and 5 of the PLPA restricts only "the cutting of trees or timber or collection or removal or subjection to any manufacturing process", those lands are not to be treated as "forest lands" and such lands can be used for "non-forest purposes".

5. It has been accordingly prayed that only those lands where clearing, breaking-up or cultivation has been prohibited by a special order notified u/s 4[a] or 5[a] of the PLPA, 1900 may be treated as "forest lands" as has been so held by the Hon"ble Supreme Court in M.C. Mehta's case (supra) and not those lands in respect whereto general restrictions have been imposed u/s 4[c] and [d] or

Section 5[c] and [d] of the PLPA, 1900.

6. Notice of this application was issued and in response thereto, non-applicant petitioners have also placed on record a notification dated 29th January, 1993 issued by the State of Haryana u/s 4 of the PLPA by which activities for clearing or breaking-up for cultivation or for any other purpose forbidden over lands reserved for grazing purposes or mere as Ghasni, Charand and Shamlat Deh which were ordinarily not under cultivation. After taking that notification on record, we, vide our order dated 21st August, 2009 directed the Principal Chief Conservator of Forests, Haryana to produce copies of all the notifications issued under Sections 4 and 5 of the PLPA and specifically state on affidavit that there are no other notifications except the ones enclosed by him with the affidavit so that all such notifications as have been issued are brought on record and also made available to the public through Internet.

7. In compliance thereto, Dr. D.R. Ramesh Singh, IFS, Principal Chief Conservator of Forests, Haryana, has filed an affidavit along with copies of "all the notifications issued under Sections 4 and 5 of the PLPA which subsist as per the tenure given in the notifications" and have been collectively attached as Annexure A-1. The affidavit further states that "there is no other notification issued under Sections 4 and 5 of the PLPA which subsists as per the tenure of its operation given in the notifications". The details of the areas, villages and Tehsil-wise, covered under the notifications [Annexure A-1 (Colly)] have also been appended as Annexure A-2. The affidavit further explains that the area covered by the notification dated 29.1.1993 placed on record by the petitioners has never been treated and maintained as "forest land" for the reason that the said notification is general in nature and there is no absolute prohibition on clearing or breaking up of the land for "non-forest purposes" without the consent of the right-holders for such prohibition and, in any case, clause 8 of the notification expressly permits the quarrying of stone or burning of lime without any prior permission. In this manner, the Principal Chief Conservator of Forests has stated on oath that there are in all 77 notifications [Annexure A1] covering an area of 12527.94 hectares of land under Sections 4 and 5 of the PLPA and spread-over in various villages, Tehsils and Districts of the State of Haryana, particulars whereof have been compiled in Annexure A-2. The land covered by these notifications alone has been treated as "forest land" in the records of the Forest Department, as stated on oath before us. This very plea was taken by the Forest Department before the Hon"ble Supreme Court firstly while disclosing the total "forest cover" of the State and later on while making an unsuccessful attempt for exclusion thereof from the "forest area".

8. The record further reveals that just an incomplete copy of the notification dated 28.11.1997, extensively relied upon by us while deciding Issue No. 1, was placed on record. The said notification imposes general restrictions on the "cutting of trees or timber except eucalyptus and popular or collection or removal of the forest products etc" and it applies throughout the State in the following

areas:

SCHEDULE

District	Tehsil	Villages
Panchkula Kalka Area lying on North side of Metalled and unmetalled Ambala Naraingarh road connecting Chandigarh, Panchkula, Ramgarh, Raipur Y. Nagar Jagadhri Rani, Naraingarh, Sadhaura, Bilashpur, Chhachhrauli, Dadupur, and reaching Jamuna river near villages Nathanpur and Lakur. Faridabad Ballabgarh Area lying on Western side of Delhi - Ballabgarh road and northern side of Ballabgarh - Sohna road. Gurgaon Nuh Areas lying on Western side of Delhi Alwar road. Ferozepur All revenue estates of Ferozepur Jhirka Tehsil. Jhirka Gurgaon All revenue estates of Gurgaon Tehsil Sohna All revenue estates of Sohna Tehsil Pataudi All revenue estates of Pataudi Tehsil Mohindergarh Narnaul All revenue estates of Narnaul Tehsil Mohinder- All revenue estates of Mohindergarh Tehsil garh Rewari Rewari All revenue estates of Rewari Tehsil Bawal All revenue estates of Bawal Tehsil Kosli All revenue estates of Kosli Tehsil Bhiwani Dadri Areas lying on western side of Dadri, Bhiwani, Bhiwani Tosham & Hisar road. Loharu		

9. The Advocate General assisted by Mr. Narender Hooda, Advocate, appears to be right in contending that the total land forming the subject matter of this notification measures over four lac hectares and includes even those areas of the National Capital Region [Gurgaon & Sohna] which stand completely urbanised.

10. In M.C. Mehta's case (supra), also, the only question that arose for consideration before the Supreme Court was as to whether the State of Haryana could take a complete somersault and be permitted to exclude the areas notified under Sections 4[a] or 5[a] of the PLPA from its total forest cover, even if such areas had always been treated and recorded as "forest lands" by the Forest Department? Their Lordships turned down the State's plea and consequently the above notified lands continued to be treated as "forest lands". To be more precise, the question as to whether or not the areas regulated by different restrictions imposed under Sections 4[c] & [d] and 5[c] & [d] of the PLPA also constitute "forest lands", was neither deliberated upon nor responded to by the Supreme Court in that case.

11. Contrary to it, our order dated 15th May, 2009 has declared the entire area notified under Sections 4 and 5 of the PLPA as the "forest land" irrespective of the nature of restrictions imposed vide such notification(s). The error has apparently crept up for the reason that neither a complete copy of the notification dated 28.11.1997 was placed on record nor, to our dismay and surprise, the notifications issued under Sections 4[a] and 5[a] of PLPA [Annexure A-1 (Colly)] prohibiting clearing, breaking-up or cultivation of the lands, now being treated as "forest lands", were brought on record by the Forest or the

Mines and Geology Departments of the State of Haryana. The same have been brought on record for the first time after the main decision.

12. In the absence of both sets of notifications, namely, one which prohibits clearing, breaking up or cultivation of the land and the other which simply restricts the cutting of trees and timber etc., we had no occasion, while passing our order dated 15th May, 2009, to draw any distinction in respect to their legal implications or the nature of land covered by these notifications.

13. The contention that only those lands where clearing, breaking up or cultivation has been prohibited u/s 4[a] or 5[a] of the PLPA are to be treated as "forest lands" finds force and is consistent with Section [2][ii] read with the Explanation, of the Forest [Conservation] Act, 1980 which reads as follows:

2. Restriction on the dereservation of forests or use of forest land for non-forest purposes.- 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.:

[i] xx xx

[ii] that any forest land or any portion thereof may be used for any non-forest purpose,

xx xx

Explanation.- For the purposes of this Section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for:

[a] the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticulture, crops or medicinal plants;

[b] any purpose other than reafforestation, but does not. include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

14. We are, however, aghast to know [as has been brought to our notice during the course of hearing of this application as well as in other related matters] that copies of the notifications issued under Sections 4 or 5 of the PLPA [Annexure A-1 (Colly)] are neither readily available with the Divisional Forest Officers/other Forest Officers nor have been brought to the notice of the Mines and Geology Department of the State. Resultantly, no demarcation appears to have been done, at the spot, of the lands covered by these notifications by the revenue department. This has not only led to a large scale illegal mining in the prohibited areas but has also become a source of loss to the State exchequer and/or corruption at various levels. It further appears that the private forest land measuring 12527.94 hectares exists more on papers than on the ground and the intrusion by the quarrying contractors into the forest areas, with or without the

connivance of the authorities of the Forest and Mines and Geology Departments, has led to a spate of litigations including various writ petitions filed in Public Interest. We are, therefore, of the view that the "forest lands" covered by the notifications [Annexure A-1 (Colly)] need to be saved from the illegal and unscientific mining, which is bound to have devastating effects in the area leading to ecological imbalance.

15. We, therefore, allow this application and modify our order dated 15th May, 2009 qua Issue No. 1 read with direction No. [i] contained in Paragraph 57 thereof, and clarify that only those lands/areas forming part of the notification issued u/s 3 of the PLPA, 1900 in respect of which restrictions against clearing, breaking up or cultivation have been imposed under Sections 4[a] or 5[a] of the said Act, are declared as "forest lands" for the purposes of the Indian Forest Act and the Forest [Conservation] Act, 1980 and the said areas shall not be used for "non-forest purposes" including the mining of major or minor minerals. This shall, however, not preclude the State Government from imposing such restrictions in respect of the remaining area[s] notified u/s 3 of the Act, if so required to be done in public interest.

16. In addition to the directions already issued vide our order dated 15th May, 2009, we deem it appropriate to issue the following additional directions as well:

[i] copies of all the notifications issued under Sections 4 and 5 of the PLPA, 1900 [Annexure A-1 (Colly)] along with compilation of the total covered area [Annexure A-2] shall, within one month from the date of receipt of a copy of this order, be sent to all the Divisional Forest Officers and Range Forest Officers of the Forest Department as well as to the State and District Mining Officers of the Mines and Geology Department of the State of Haryana. A compliance report shall also be placed before this Court;

[ii] all the Divisional Forest Officers within whose jurisdiction the land covered by the above-stated notifications under Sections 4 and 5 of the PLPA is located, shall within two months from the date of receipt of the copies of the notifications, get the "forest lands" demarcated by the revenue authorities and in the presence of the District Mining Officer concerned. The Tehsildars of the concerned areas and other revenue authorities shall comply with this order forthwith. The demarcation reports shall be jointly signed by the Divisional Forest Officer, the State/District Mining Officer as well as the Tehsildar of the concerned area;

[iii] every Divisional Forest Officer and the District Mining Officer shall be personally responsible to ensure that no mining activity or any other nonforest activity is allowed to be carried out in the "forest lands" covered under the notifications [Annexure A-1 (Colly)]. The Director, Mines and Geology as well as the Principal Chief Conservator of Forests, Haryana shall ensure meticulous compliance of these directions;

[iv] till copies of the notifications are made available to the Divisional Forest Officers/Range Forest Officers and State/District Mining Officers, as directed

above, and until the demarcation of the area is completed in association with the revenue authorities as per direction No. [ii] above, no mining or other non-forest activity shall be allowed even over the lands abutting the "forest lands" covered by the notifications issued under Sections 4 and 5 of the PLPA [Annexure A-I(Colly)]. We make it clear that the mining activities in the adjoining permissible areas shall be allowed only after the demarcation of the "forest lands" is complete;

[v] as regards the lands located in Kalka and Panchkula Tehsils reserved for common grazing or recorded as Ghasnis, Charand, Shamlat-deh, which were ordinarily under cultivation prior to the issuance of the notification dated 29th January, 1993 [Annexure P-23] and are stated to have been vested with the Gram Panchayats under the Punjab Village Common Lands & Regulation Act, 1961, we direct that no mining activities or any other nonforest activity shall be allowed over the said lands until such lands or any part thereof is taken out of the purview of the aforestated notification by the Competent Authority on an application/consent of the right-holders. In case the Competent Authority declines the permission, the lands covered by the notification dated 29th January, 1993 shall also be treated as "forest lands" for all intent and purposes;

[vi] the State Government through its Forest and Mines and Geology Departments shall immediately evolve a scheme for videographing the entire forest area of the State, especially the private forest lands which shall be periodically updated to assess the actual forest cover at the spot;

[vii] all the notifications issued under Sections 3, 4 and 5 of the PLPA, 1900, including the notifications other than the notifications [Annexure AI (Colly)] as well as the notification dated 29th January, 1993 [Annexure P-23], are directed to be uploaded on the website of the Forest Department, Haryana within a period of three months to facilitate public access to these notifications.

17. We further clarify that direction No. [xii] contained in our order dated 15th May, 2009 shall remain unaffected and shall have to be complied with.

18. CM No. 12170 of 2009 stands disposed of.

CM. No. 13502 of 2009

19. This application seeks clarification of the order dated 15th May, 2009 as according to the applicant it is not clear from our above-stated order as to whether the notification dated 14th September, 2006 issued by the Central Government under the Environment Protection Act, 1986 governs the mining activities in the entire State of Haryana or its operation is restricted only to the "mining areas" in the Shivalik Ranges of Himalyas.

20. Notice of this application was issued and in response thereto, learned State Counsel fairly concedes that direction No. [ii] contained in para 57 of the order dated 15th May, 2009 explicitly holds that the abovestated notification dated 14th September, 2006 governs all the "mining activities" through out the State

of Haryana.

21. We also find from the above referred direction that the notification dated 14th September, 2006 is applicable to all the "mining activities" irrespective of the fact that the minerals are major or minor and it applies to all the "mining areas" including those in the Shivalik Ranges of Himalyas.

22. CM No. 13502 of 2009 also stands disposed of accordingly.