

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Original Application No. 04 of 2013 (Suo Moto)
(M.A No. 186/2013, M.A No. 568/2013, M.A No. 737/2013,
M.A No. 74/2014, M.A No. 75/2014 & M.A No. 787/2014)**

And

**Original Application No. 28 of 2015
(M.A. No. 61/2015)**

IN THE MATTER OF:

Sonya Ghosh Vs. State of Haryana & Ors.

And

Haryali Welfare Society Vs. Union of India & Ors.

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

**Present: Applicant: Mr. Raj Panjwani, Sr. Adv. (Amicus Curiae)
with Mr. Aagney Sail, Adv.
Mr. Rahul Choudhary and Mr. Saurabh
Sharma, Adv.**

**Respondents: Mr. Anil Grover, AAG with Mr. Rahul
Khurana and Mr. Mishal Vij, Adv. for State
of Haryana & HSPCB
Mr. Adhiraj Singh, Adv. For Rajasthan
Ms. Salonee Agarwal, Adv. - MA 74 &
75/2014**

Respondent N.9&10

Date and Remarks	Orders of the Tribunal
Item Nos. 01-02 October 23, 2018 dv	<p>1. The issue taken up for consideration in these proceedings relates to illegal constructions raised in violation of the Notification issued by the Ministry of Environment, Forest & Climate Change (MoEF&CC) dated 07.05.1992 under the Environment (Protection) Act, 1986 prohibiting any activity in the area covered by the table appended to the Notification in the Aravali hills without prior permission. The areas covered by the Notification include those mentioned as 'forest' in the land revenue records maintained by the State, "Gair Mumkin Pahar" (hillocks) apart from other categories specified in the said table.</p>

	<p>Item Nos. 01-02</p> <p>October 23, 2018 dv</p>	<p>2. The proceedings initially commenced on the basis of a news item in the Times of India dated 07.01.2013 to the effect that private players were grabbing forest land in the Aravalis. Description of land which was <i>Gair Mumkin Pahar</i> (unoccupied hillocks) covered by the above Notification was wrongly got changed as '<i>Gair Mumkin Farm</i>' with a view to avoid the implications of the said Notification. The land was also notified under Sections 4 and 5 of the Punjab Land Preservation Act, 1900 (PLPA Act) which could not be allowed to be diverted for non-forest activities. The newspaper item alleged that there was business-politico- bureaucratic-police nexus for grabbing the forest land.</p> <p>3. Reply was filed on behalf of the Haryana Pollution Control Board to the effect that a physical survey was being conducted of the area falling under the Notification dated 07.05.1992. In the reply filed by the Principal Chief Conservator of Forests, Haryana, the extent of area covered by under Sections 4 and 5 of the PLPA Act was given. It was stated that the area was to be treated as 'forest' area in view of the judgment of the Hon'ble Supreme Court of India dated 18.03.2004 in <i>M.C. Mehta Vs. Union of India & Ors.</i>¹ The State of Haryana had a project for plantations in the said area. Out of three villages mentioned in the news item, in 1586.36 acres of land, plantations were raised in village Kot. In 1186.76 acres of land, plantations were raised in village Mangar. Plantations were raised in 3813 acres of land, in village Roz Ka Gujjar. No mining is permitted in the said land.</p>
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¹(2004) 12 SCC 118

	<p>Item Nos. 01-02</p> <p>October 23, 2018 dv</p>	<p>Only where permission of Central Government has been taken under Section 2 of the Forest (Conservation) Act, 1980, non-forest activities have been allowed. List of violators for illegal construction activities was annexed which mentioned names of nine persons. It was stated that prosecution was initiated against the violators as per the list annexed which included sixteen persons. It is further stated that trenches were dug at the entry point of the forest areas and a Committee headed by the DFO, Gurgaon, was constituted to curb violations.</p> <p>4. The matter has been put up for consideration on more than 80 dates and various orders have been passed. It is not necessary to refer to all the orders. Some of the orders in which operative directions have been issued may be referred to the extent relevant.</p> <p>5. On 23.01.2013, stand of the State of Haryana was noted that commercial activities of sale and purchase of marble and construction of sheds was not permissible on the forest land. The Tribunal enjoined such commercial activity.</p> <p>6. On 13.03.2013, the Tribunal recorded the statement made on behalf of the State of Haryana that no non-forest activity will be allowed in forest area in villages Kot, Mangar and Roz Ka Gujjar.</p> <p>7. On 12.04.2013, again the direction for prohibiting non-forest activity in the forest area was reiterated.</p> <p>8. On 12.02.2014, the Tribunal directed furnishing of details whether the area was forest area in the revenue record and covered by the Aravali Notification and whether there was any order of the Hon'ble Supreme Court with</p>
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	<p>Item Nos. 01-02</p> <p>October 23, 2018 dv</p>	<p>regard to area covered by the Aravali Notification. The State was also directed to ensure that restrictions in terms of the Notification are followed.</p> <p>9. On 28.04.2014, the Tribunal recorded the statement made on behalf of the State of Haryana that the effect of the Notification under Sections 4 and 5 of the PLPA Act was being considered by the Hon'ble Supreme Court and time was required for steps being taken against 566 violators of the Aravali Notification.</p> <p>10. On 21.04.2014, further direction was issued furnishing information of unauthorised constructions in violations of Aravali Notification. Similar direction was also issued on 18.07.2014.</p> <p>11. On 27.01.2015, the stand of the State of Rajasthan that there are 695 cases of encroachments was noted.</p> <p>12. On 05.02.2015, directions were issued against illegal mining activities, illegal crushers in the area surrounded by Sariska Tiger Reserve on the one side and Bharatpur Bird Sanctuary on the other. The State of Haryana was also required to file latest status report. It was noted that in the State of Rajasthan there were 698 unauthorised structures in the Aravali forest area.</p> <p>13. On 24.01.2018, the State of Haryana was required to furnish complete data about structures erected on the <i>Gair Mumkin Pahars</i> covered by the Aravali Notification.</p> <p>14. We may also refer to the affidavit of the State of Haryana filed on 31.03.2014 to the effect that 800 acres of land has been notified under Sections 4 and 5 of the PLPA Act in villages Kot, 1132 acres of land has been so notified in village Mangar and 4798 acres of land has been in</p>
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village Roz Ka Gujjar. The said land is recorded in the revenue record as forest. The land covered by the Notification under PLPA Act is being treated as forest. However, a clarification has been sought by filing an application in the Hon'ble Supreme Court.

15. We have heard the learned Counsel for the parties and perused the documents referred to at the time of hearing on record.

16. We have been particularly taken to the Notification dated 07.05.1992. The table appended to the Notification refers to four categories of areas. It will be appropriate to quote the relevant part.

“Areas where carrying on of processes and operations without permission is prohibited

(i) *All reserved forests, protected forests or any other area shown as "forest in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon District of the State of Haryana and the Alwar District of the State of Rajasthan.*

(ii) *All areas shown as: -*

- (a) *Gair Mumkin Pahar, or*
- (b) *Gair Mumkin Rada, or*
- (c) *Gair Mumkin Behed, or*
- (d) *Banjad Beed, or*
- (e) *Rundh.*

in the land records maintained by the State Government as on the date of this notification in relation to Gurgaon district of the State of Haryana and the Alwar district of the State of Rajasthan.

(iii) *All areas covered by notifications issued under section 4 and 5 of the Punjab Land Preservation Act, 1900, as applicable to the State of Haryana in the district of Gurgaon up to the date of this Notification.*

(iv) *All areas of Sariska National Park and Sariska Sanctuary notified under the Wildlife (Protection) Act, 1972 (53 of 1972).”*

17. We have also noted that vide Notification dated 29.11.1999, the authority to take measures for protection and improvement of the area notified as per Notification dated 07.05.1992 was delegated to the State Government.

	<p>Item Nos. 01-02</p> <p>October 23, 2018 dv</p>	<p>Overall monitoring was to be done by Monitoring Committees under the respective Collectors. The States were to prepare Master Plan for development of the area and also to deal with the applications for permission to undertake non-forest activities after examining the environment impact.</p> <p>18. It has also been pointed out that the High Court of Punjab and Haryana in its judgment dated 03.05.2012 in Criminal Misc. No. M-51514 of 2007, M/s Ansal Properties and Infrastructure Ltd. & Ors. Vs. Haryana State Pollution Control Board and other matters, declined the prayer for quashing criminal proceedings with the observation that the entries of 'Gairmumkin Farm House' in place of <i>Gair Mumkin Pahar</i> were illegal. However, the observations were not to be conclusive to prejudice the pending trial. The trial court i.e. Environment Court acquitted some of the persons against whom prosecutions were initiated under the Environment (Protection) Act, 1986 on the ground that entry of 'Gair Mumkin Farm Houses' was continuing in several <i>Jamabandis</i>. Thus, the said area was not "<i>Gair Mumkin Pahar</i>" and was not covered by the notification.</p> <p>19. There is no dispute with the proposition that once the land is covered by the Notification dated 07.05.1992, no activity in violation thereof is permissible. However, the restriction applies only to the categories of land specified in table. While the view of the applicant is that what was once described as "<i>Gair Mumkin Pahar</i>" and which is covered by the Notification was illegally got converted to "<i>Gair Mumkin Farm</i>" should be treated as "<i>Gair Mumkin</i></p>
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	<p>Item Nos. 01-02</p> <p>October 23, 2018 dv</p>	<p><i>Pahar</i>” as observed by the High Court to give effect to the real intent of the notification, the stand of the State is that once entry is changed in record as “<i>Gair Mumkin Farm</i>”, the notification was not applicable.</p> <p>20. It may be apt to reproduce the observations of the High Court:-</p> <p style="padding-left: 40px;"><i>“Concededly, the developers have got changed the kind of land from Gairmumkin Mountain (Pahad) to Gairmumkin Farm houses. If any Patwari without any legal authority had made the stray entries in the Khasra Girdawari CRM Nos. M-51514 of 2007 & 880 of 2010 (alongwith connected petitions) (Annexure P6/T colly) for some consideration and for the reasons best known to him, which were illegal & without any authority and further carried out in the column of Jamabandi (Annexure P6/T colly) and Aksh Sizra (Annexure P21), then, such stray and illegal entries are non est, void and are not sufficient to hold that the land in litigation was Gairmumkin Farm houses. Such entries deserve to be outrightly ignored and kind of land in dispute (Gairmumkin Mountain (Pahad)) would remain the same for all intents and purposes in this relevant behalf.”</i></p> <p>21. However, the Trial Court acquitted some of the accused taking a different view.</p> <p>22. Ideally, the MoEF&CC should have clarified the position.</p> <p>23. In any case, without commenting of consequence of our interpretation on an <i>interprets</i> judgment and pending any specific clarification of the MoEF&CC, our view is that interpretation of a notification in an eco-sensitive area should be purposive. Even if a person is not convicted by criminal court for which proof beyond reasonable doubt is required, the authorities must enforce the intent of protecting eco-sensitive area by prohibiting construction activities.</p>
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	<p>Item Nos. 01-02</p> <p>October 23, 2018 dv</p>	<p>24. Hyper technical interpretation should not be preferred. If in substance the category of land is covered for environment protection, by mere change of nomenclature, such areas should not be read as excluded from the Notification by the concerned authorities.</p> <p>25. We may now deal with the issue of what are the illegal constructions in violation of notification dated 07.05.1992.</p> <p>26. The Notification dated 07.05.1992 also refers to the area shown as forest land. According to the State of Haryana itself, the area covered by Notification under Sections 4 and 5 of the PLPA Act is treated as forest land by the State. Area covered by PLPA notification is also part of the above table. Moreover, in the judgment of the Hon'ble Supreme Court in <i>M.C. Mehta (supra)</i>, after referring to earlier judgment in <i>T.N. Godavarman Thirumulpad Vs. Union of India & Ors.</i>², it was made clear that area covered by the Notification under Sections 4 and 5 of the PLPA Act was to be treated as forest area.</p> <p>27. In view of above, any construction raised on the forest area or the area otherwise covered by Notification dated 07.05.1992 without permission of the competent authority (after the date of the said Notification) has to be treated as illegal and such forest land has to be restored.</p> <p>28. We order accordingly.</p> <p>29. Since there is dispute about the identity of the land covered by the Notification dated 07.05.1992, as far as the land covered by Notification under the PLPA Act by the State of Haryana is concerned, the same has to be treated</p>
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²(1997) 2 SCC 267

	<p>Item Nos. 01-02</p> <p>October 23, 2018 dv</p>	<p>as forest land. With regard to any other land, identification has to be made for executing the direction in this order. Such identification may be made by a Joint Committee comprising of the representatives of the MoEF&CC, Forest Departments of the States of Haryana and Rajasthan and the concerned District Magistrates in the respective States.</p> <p>30. Such Committees may assume charge within two weeks and complete the process of identification within three months thereafter. Action of restoring the forest land already identified or which may be identified may be completed within next three months.</p> <p>31. In view of the above, the applications stand disposed of.</p> <p>32. A report of the action taken may be filed before this Tribunal on or before 31.05.2019. The same may be put up for consideration on 2nd July, 2019.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p> <p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p style="text-align: right;">23.10.2018</p>
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