

Item No. 03 & 04

Court No. 1

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

(By Video Conferencing)

Original Application No. 41/2015

Umashankar Patwa & Ors.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

(Earlier titled as D.K. Joshi Vs. Union of India & Ors.)

With

Original Application No. 189/2014

Umashankar Patwa & Ors.

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Union of India & Ors.

Respondent(s)

(Earlier titled as D.K. Joshi Vs. Union of India & Ors.)

Date of hearing: 01.06.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Raj Panjwani, Senior Advocate with Mr. Rahul Choudhary,
Advocate

Respondent(s): Mr. Divya Prakash Pandey, Advocate for MoEF&CC.
Mr. Bhanwar Pal Singh, Advocate for State of UP
Mr. Pradeep Misra, Advocate and Mr. Daleep Dhyani, Advocate for
UPPCB.
Mr. Ajit Sharma, Advocate for Anand Engineering College and
Hindustan Institute of Technology & Management.
Mr. Anant Ram Mishra, Advocate

ORDER

1. The question for consideration is whether Hindustan Institute of Technology & Management, Agra (HIT) (Respondent No. 5 in O.A. No. 41/2015) and Anand Engineering College, Agra (AEC) (Respondent No. 5

in O.A. No. 189/2014) are within the Wildlife Sanctuary notified by the State of Uttar Pradesh as “Soor Sarovar Bird Sanctuary” vide Notification dated 27.03.1991 in District Agra, under Section 18 of the Wild Life (Protection) Act, 1972. If it is within the Wildlife Sanctuary, restrictions under Section 27 will apply and the setting up of the said colleges itself may be questionable.

2. The matter has been considered by the Tribunal on several occasions in the last seven years. On 09.04.2019, after referring to the earlier proceedings, the Tribunal observed:

“8. We are of the view that opinion of the MoEF&CC may be required on the following issues:

- i. Whether the restriction under the Wild Life (Protection) Act, 1972 will apply to the entire area, including the area beyond 403.09 ha indicated by blue line.*
- ii. Whether any restriction applies to the area outside the protected area of ‘403.09 ha’. This question may also require consideration of safety zone or buffer zone adjacent to the Bird Sanctuary. We also find from the document ‘Eco-Sensitive Zone of Soor Sarovar Bird Sanctuary’ that area of ESZ is 1020.25 ha while the protected area proposed is 403.09 ha.*
- iii. Further question will be regulation of other structures or activities falling in the proposed ESZ and the mitigation steps required and proposed.*

9. The MoEF&CC may furnish its report in the matter within two months by e-mail at ngt.filing@gmail.com. State of UP/Chief Wild Life Warden, UP may provide copies of relevant official record within two weeks to MoEF&CC.”

3. The matter was last considered on 18.09.2020 in the presence of Advisor, MoEF&CC. It was found that there were conflicting interpretations about the area covered by the restrictions under Section 27 of the Wildlife (Protection) Act, 1972 which were required to be resolved by a joint Committee comprising Chief Wildlife Warden, UP and nominees of National Board for Wildlife and Forest Division of MoEF&CC. Operative part of the said order is as follows:-

“3. We have today heard the matter again with the assistance of Advisor, MoEF&CC, who is present in person and who has also had some discussion with the Department of Wildlife. He submits that there is discrepancy which needs to be resolved by the State Government, with the assistance of the concerned central authorities. We find that even though the protected area described by the blue line in the map is 403.09 ha, the area of the sanctuary is said to be 1020.25 ha, which includes 403.09 ha. There are constructions outside 403.09 ha but within 1020.25 ha. If they are part of the Wild Life Sanctuary, under Section 27 of the Wild Life (Protection) Act, 1972, such constructions are not allowed and are illegal unless the boundary of the wildlife sanctuary itself is changed under Section 26A of the Act. The constructions in question are said to be after the 1991 notification. Thus, either it should be clearly declared that the area is part of the wildlife sanctuary and in such case all constructions in the said area should be removed or the boundary of the wildlife sanctuary itself should be appropriately demarcated and laid down.

4. Let this be done by a joint Committee of Chief Wildlife Warden, UP, nominees of National Board for Wildlife and Forest Division of MoEF&CC. The nodal agency will be the nominee of the National Board for Wildlife for coordination and compliance. The first meeting of the Committee may be held (either physical or virtual) within one month from today. The State of UP may provide all necessary assistance to the Committee to execute its work. Report may be furnished by the Committee to this Tribunal within three months by e-mail at judicial-ngt@gov.in, preferably in the form of searchable PDF/OCR Support PDF, and not in the form of Image PDF.”

4. Accordingly, the joint Committee, in terms of above order, has filed its report dated 27.01.2021. In substance, it is stated that the Notification in question dated 27.03.1991 was issued under Section 18 of the 1972 Act, which was intended to be a proposal, as per the statutory scheme then prevalent. Soon thereafter, an amendment was made due to which separate final Notification was not considered necessary. Notification dated 30.03.2008 was issued under Sections 19 to 25 of the Act reiterating the same boundary, without considering the objections and claims. However, breakup of the sanctuary area was given as follows:-

“Land of the Keetham Forest Block: 92.49 ha

Govt. land/Lake and dam area: 310.60 ha

Total: 403.09 ha”

5. After the last order of this Tribunal, the Committee met and visited the site and found that the wetland fed by Agra canal attracted the birds. The Engineering Colleges in question were outside 403.09 hectare of the sanctuary but within total landscape of 799.063 hectare. Since the village land was also included within the area of 799.063 hectare, the entire area could not be intended to be part of the sanctuary as such case section 27 could not be enforced. Substantial area was under private ownership and belongs to village Arsena. This issue remained unaddressed during settlement process. Notification under Section 26 was required to be issued, treating the earlier Notification as a proposal. There was also conflict in the Notification of Eco Sensitive Zone (ESZ) of Soor Sarovar Bird Sanctuary (SSBS) dated 10.10.2019 and the boundary description of SSBS on account of which ESZ Notification has been put on hold. The report concludes with following recommendation:

- “i) Since, in the notification of the sanctuary under section 18, the described area of the sanctuary and the boundary of the sanctuary do not match so it needs modification.*
- ii) Since the settlement process of the SSBS has not addressed the issue of boundary and rights properly, therefore the action under section 21 to 25 may be reconsidered and a clear Map indicating the proposed boundary pillars on the boundary of SSBS along with their forward and backward bearings may also be given.*
- iii) The committee feels that the outer boundary of the three villages on east (Runakta), west (Nagla-Bhopla) and north (Singna) should be considered as the boundary abutting the composite of wetland (403.09 ha), Soordas Reserve Forest Block (380.558 ha) and Government land (15.415 ha) totaling to 799.063 ha.*
- iv) As recommended by the ESZ expert committee, the ESZ notification of the areas around SSBS should be kept on hold and de-notified and fresh notification may be brought out only after the finalization of the sanctuary boundaries after final notification of the sanctuary under section 26, Wildlife (Protection) Act 1972.”*

6. As against above, the applicant has filed submissions in the nature of objections to the report. It is submitted that Notification under Section 18 has to be treated as final Notification and any modification thereof is prohibited under Section 26A(iii). No objections were filed before the Collector in spite of proclamation by the Collector under Section 22 of the Act dated 26.05.1997 and thereafter on 10.07.2003 and 20.03.2008. It is further submitted that Section 20 of the Act created a bar against acquisition of any right after Notification under Section 18. It is further stated that College adjoins the boundary of the sanctuary. Even though the land was acquired in 1997, the construction took place in 2011. The stand that construction took place in 1997 was contradicted by the reply of UPPCB to the effect that construction was still going on in 2009. Moreover, purchase of land in the year 1997 was by itself illegal, being after Notification under Section 18. Further reference has been made to the orders of the Hon'ble Supreme Court dated 13.11.2000 in I.A. No. 2 in *W.P(C) No. 337/1995, Centre For Environmental Law, WWF-India v. Union of India & Ors.*¹ and dated 05.10.2015 in IA No. 2365 in 1406/2005 in *W.P. (C) No. 202/1995, T.N. Godavarman Thirumulpad v. Union of India & Ors.* to the effect any de-notification of a Sanctuary/National Park should be after reference to the National Board for Wildlife and Forest. Thus, recommendation for excluding the area of illegal constructions from the sanctuary was legally impermissible.

7. Learned Counsel for the applicant also submitted that in case the authorities are to issue any further Notification/Order, altering/clarifying the boundary of the wildlife sanctuary, procedure laid down by the

¹ 2000 SCC OnLine SC 119

Hon'ble Supreme Court must be followed and injunction issued against any further constructions in the entire notified area of the sanctuary.

8. We have considered the matter with the assistance of Mr. Raj Panjwani, learned Senior Counsel for the applicant as well as learned Counsel appearing for the MoEF&CC, the State PCB and the private respondents, concerned. While Shri Panjwani opposed the report of the Committee and supported the submissions filed by the applicant, learned Counsel for the respondents support the report but agree that pending finalisation of the notification, there should be no constructions in the entire area in section 18 of the Notification and due, including directions of the Hon'ble Supreme Court, may be followed.

9. We find that originally Notification was issued under Section 18 which only envisaged a proposal. There was scope for objections in the final Notification particularly as there existed a village in the boundary of the notification. Two interpretations are possible about applicability of section 27 restrictions to the village and the constructions beyond 403.09 ha area. Thus, section 18 of the Notification could not be treated as final. Even if we accept the plea that present constructions were in the year 2011 and the petition filed in the year 2014 was within limitation, we find it difficult to hold that the claim for demolition of all constructions falling beyond 404.09 ha area is established. Even apart from the colleges in question there is whole village habitation which stands on the same footing as these colleges and the constructions exist even prior to the notification. It could not be intention of law to allow such constructions within the sanctuary limits and debar other constructions therein. Thus, the expert committee report has sound basis in recommending that the matter needs to be finalised by taking

further necessary steps. The recommendations have to held to be justified on principle, on taking a pragmatic view. As already noted, the Committee has rightly observed that there are large scale constructions existing even prior to Section 18 of the Notification outside the core area of the sanctuary in question. Thus, the confusion needs to be resolved by an appropriate final notification in accordance with law. Infact, this should have been done long back in which case such litigation could have been avoided. To that extent, the concerned authorities have failed to perform their duty.

10. Accordingly, we direct that the pending matter be finalized by the authorities concerned within three months and pending such finalization no further construction be allowed. Needless to say that all further steps which may be taken must be in accordance with law and compliant with the directions of the Hon'ble Supreme Court on the subject.

The applications stand disposed of. However, if there is any grievance against any further order which may be passed, the aggrieved parties will be at liberty to take remedies in accordance with law.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

June 01, 2021
OA No. 41/2015 & OA No. 189/2014
AVT