

Item No. 03

(Court No. 01)

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

(By Video Conferencing)

Original Application No. 637/2018

(With report dated 1.07.2021)

Sher Singh

Applicant

Versus

Govt. of Himachal Pradesh

Respondent

Date of hearing: 08.07.2021

**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**

Respondent: Mr. Manish Kumar, Advocate for State of HP

**ORDER**

1. The issue relates to alleged **illegal encroachment of the Government land in Himachal Pradesh**. On 28.09.2018, this Tribunal sought a report from the Deputy Commissioner, Shimla and the Principal Chief Conservator of Forest, Himachal Pradesh. The matter was then considered on 16.05.2019 in the light of **report dated 27.12.2018 from the Deputy Commissioner, Shimla to the effect that proceedings for removal of encroachment were pending**. The Tribunal directed that the pending proceedings be concluded at the earliest as encroachment of public land in forest area was involved.

2. The matter was considered on 04.08.2020 as follows:-

“1&2...xxx.....xxx.....xxx

3. As per report dated 31.07.2020 received from Deputy Commissioner, Shimla, eviction proceedings were concluded before

the Sub-Divisional Officer (Civil) under the provisions of H.P. Public Premises & Land (Eviction and Rent Recovery) Act, 1971 on 3.8.2019 with the following order:

**“Therefore, in exercise of the powers conferred on me by Sub-Section (1) of Section 5 of the HP Public Premises and Land (Eviction and Rent Recovery) Act, 1971, I hereby order the said Smt. Banti Devi wife of Sh. Keshav Ram Bhardwaj, resident of Ward No. 3, Nagar Panchayat Narkanda, Tehsil Kumarsain, District Shimla-H.P. and all persons who may be in occupation of the said premises or any part thereof to vacate said premises within 30 days of the date of publication of this order and will shift all materials/fixtures etc. Constructed over the land at its own cost. In the event of refusal of failure to comply with the orders with in the period referred above. The Assistant Engineer, National Highway No. 5 is directed to get the said premises vacated from the respondent Smt. Banti Devi. In case any assistance is required he may approach the concerned Executive Magistrate/Police for taking necessary action. A copy of this order be sent to the petitioner as well the respondent for implementation and compliance.”**

3. Thereafter, eviction order has been stayed by the Divisional Commissioner, Shimla and proceedings are still pending with the Divisional Commissioner.

**4. In view of the finding that there is encroachment of public land and that too in violation of the Forest Conservation Act, 1980, we find it necessary to observe that public interest requires that the pending proceedings before the Appellate Authority are expeditiously disposed of without any further delay.**

A copy of this order be sent to the Additional Chief Secretary, Revenue Department, H.P. and the Divisional Commissioner, Shimla by e-mail.

A further report in the matter be furnished by the Deputy Commissioner, Shimla before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.”

3. The matter was last considered on 24.02.2021 in the light of the further report of Deputy Commissioner, Shimla. Operative part of the said order is as follows:-

**“5. Accordingly, the Deputy Commissioner, Shimla has furnished a report that in appeal the matter was remanded to the SDM and it is still pending.**

6. We find it disturbing that inspite a finding that **public land in forest area was encroached** and direction of this Tribunal dated 4.8.2020 that delay by the Commissioner was against public interest, the Commissioner has conveniently remanded the matter which may result in further delay to the detriment of public interest. The matter has been pending before this Tribunal for the last more than two years and in spite of there being clear encroachment on the Government land, the concerned Authorities are delaying the matter on one ground or the other. Under the circumstances, bonafides of the officers delaying the proceedings and thereby facilitating illegal encroachment of forest land of the State for private purpose, may need to be looked into. Prima facie, such delay does not appear to be justified and bonafide.

7. In a recent judgment dated 12.01.2021 in Civil Appeal Nos. 5231-32 of 2016, Himachal Pradesh Bus Stand Management and Development Authority (HPBSM&DA) v. The Central Empowered Committee Etc. & Ors., the Hon'ble Supreme Court while dealing with the illegal construction of a hotel at McLeod Ganj in H.P. on the forest land, observed:

“42. xxx .....xxx.....xxx

The provisions of Section 2 mandate strict and punctilious compliance. Mere substantial compliance is not enough. The construction of the Hotel-cum-Restaurant structure is entirely illegal, having been carried out in clear breach of this mandatory statutory stipulation. That officials of statutory bodies of the State Government have connived at the violation of law is a reflection on the nature of governance by those who are expected to act within the bounds of law.

xxx .....xxx.....xxx

46. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law. It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the arc of governance. By focussing on the structural norms which guide institutional decision making, rule of law frameworks recognise the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its

*sweep and ambit. It recognises that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.*

xxx .....xxx.....xxx

59. .... *In the past, this Court has clamped down on illegal activities on reserved forest land specifically, and in violation of environmental laws more generally, and taken to task those responsible for it.*

xxx .....xxx.....xxx

64. *Based on our analysis above, we uphold the directions which have been issued by the NGT in its judgment. By the earlier orders dated 16 May 2016 and 9 September 2016, this court only stayed NGT's direction in relation to the demolition of the Hotel-cum-Restaurant structure. The appellant has tried to argue against the demolition of the Hotel-cum-Restaurant structure in the Bus Stand Complex, submitting that it may be allowed to stand for their use. However, we cannot accept this submission. Doing so would legalise what is an otherwise entirely illegal construction, the reasons for which have been adduced by us in the judgment above.*

65. *Hence, we direct that the process of demolishing the Hotel-cum Restaurant structure in the Bus Stand Complex be commenced within two weeks from the date of the judgment and the structure shall be demolished by the second respondent within one month thereafter. In the event of default, the Chief Conservator of Forest along with the administration of district Dharamshala shall demolish the structure and recover the cost and expenses as arrears of land revenue from the second respondent."*

**8. In view of above, the matter needs to be looked into and remedial action taken at the higher level in the State. Accordingly, we direct the Chief Secretary, Himachal Pradesh to look into the matter and ensure protection of public land in the forest area, monitoring expeditious action against the law violators, following due process and furnish compliance report before the next date. The Chief Secretary may also have it examined whether requisite remedial action by way of prosecution and otherwise has been initiated in accordance with the provisions of the Indian Forest Act, 1927 read with Forest (Conservation) Act, 1980."**

4. Accordingly, the Chief Secretary, HP has filed compliance report on 01.07.2021 to the effect that land was found to be *Gair Mumkin Sadak* in revenue papers and thus is non-forest land. The fact remain that the land

is covered by the definition of 'public premises' and encroachment is required to be removed. The report of the Chief Secretary does not mention the timelines for further action.

5. Accordingly, in view of the long delay which has already taken place, irrespective of the question whether land is forest or non-forest **government** land, the State Authorities must ensure further action. We note that order dated 03.08.2019 for eviction was passed under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 but the same is not being given effect to on account of further orders which, in view of the report of Chief Secretary are not sustainable.

6. Let the matter be monitored by the Chief Secretary, H.P. to ensure compliance of rule of law and protection of the government property.

The application is disposed of.

A copy of this order be forwarded to the Chief Secretary, H.P. by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

July 8, 2021  
Original Application No. 637/2018  
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