

Item No.02

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL**

(By Virtual Mode)

Original Application No.67/2023(CZ)

Mr. Nitin Saxena

Applicant(s)

Versus

Department of Forest & Ors.

Respondent(s)

Date of hearing: 04.08.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s) : Mr. Harshwardharn Tiwari, Advocate

ORDER

1. This Original Application under Sections 14, 15, 16 and 18(1) of NGT Act, 2010 has been filed by Mr. Nitin Saxena, an environmentalist and resident of Bhopal, complaining that Bhopal Municipal Corporation (hereinafter referred to as '**BMC**') has illegally cut several trees in Borvan forest area/Borvan Park where more than 1,25,977 trees are standing and it comes in catchment area of "Bhoj wetland", a Ramsar site. It is said that Supreme Court in *T.N. Godavarman vs. Union of India & Ors.*, *Writ Petition (Civil) No. 171/1996*, vide order dated 12.12.1996, explained as to what 'forest' would mean for the purpose of Forest (Conservation) Act, 1980 (hereinafter referred to as '**FC Act, 1980**'). Supreme Court has said,

*"The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and fore matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. **The word "forest: must be understood according to its dictionary meaning. This description cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as***

understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works and ors. versus State of Gujarat and ors.* (1987 (1) SCC 213), *Rura' Litigation and Entitlement Kendra versus State of U.P.* (1989 Suppl. (1) SCC 504), and recently in the order dated 29th November, 1996 in *W.P.(C) No.749/95 (Supreme Court Monitoring Committee vs. Mussorie Dehradun Development Authority and ors.)*. The earlier decision of this Court in *State of Bihar Vs. BanshiRam Modi and ors.* (1985 (3) SCC 643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.”

2. Pursuant to the above judgment, Borvan forest area/Borvan Park has been recognized as ‘forest’ by State of Madhya Pradesh.

3. BMC i.e., respondent 1, however, with an intention to construct yoga/meditation shed, invited tenders and finalised the same by order dated 22.02.2023. For the above construction, in the forest area, it had to cut about 100 trees for the purpose whereof a letter dated 28.04.2023 was submitted to Additional Commissioner, Horticulture Branch and Tree Officer, Nagar Palika Nigam, Bhopal, seeking his permission which was granted by Assistant Commissioner (Horticulture) Nagar Nigam, Bhopal vide letter dated 02.05.2023.

4. Another letter was submitted on 03.05.2023 stating that construction has to be raised on 0.1 hectare land in Borvan for which 28 trees of less than 30 cm circumference and 57 trees more than 30 cm circumference have to be cut whereagainst they proposed to plant

56+228 trees and also proposed to deposit Rs.4,11,800/- with State Commissioner (Horticulture) Nagar Nigam, Bhopal. The said amount was ultimately deposited on 04.05.2023 and directions were issued by Assistant Commissioner (Horticulture), Nagar Nigam, Bhopal to cut the trees vide letter dated 04.05.2023.

5. Applicant has contended that Assistant Commissioner (Horticulture), Nagar Nigam, Bhopal has no authority to permit construction of trees in a forest which is a 'deemed forest' in the light of Supreme Court's judgment in *T.N. Godavarman (supra)* and Competent Authority for granting permission is 'Central Government' in view of Section 2 of FC Act, 1980. It is also said that "non-forest activities" in the forest land are prohibited unless prior approval of Competent Authority under Section 2 is granted. Apparently, it is evident that BMC is proceeding after obtaining permission from its own official working in Nagar Nigam, Bhopal who is not competent to grant such permission under FC Act, 1980 and further "non-forest activities" in the forest land of Borvan cannot be carried out at all.

6. We, therefore, direct PCCF, Government of Madhya Pradesh, Bhopal, State Wetland Authority and Madhya Pradesh Pollution Control Board to look into the matter and if find that trees have been illegally cut or any construction has been raised on the forest land of Borvan which is a 'deemed forest' in the light of Supreme Court's judgment in *T.N. Godavarman (supra)* without prior approval of Competent Authority under Section 2 of FC Act, 1980, the said construction activities of respondent 1 shall be restrained, construction already raised shall be demolished and appropriate environmental compensation shall also be imposed upon respondent 1. MPPCB shall be the nodal agency.

7. The aforesaid Committee shall comply the above directions and submit a compliance report by 31.10.2023 before Registrar, Central Zonal Bench, Bhopal by e-mail at ngtczbbho-mp@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF, who shall place the matter before Bench, if any, further order in the matter.

8. With the above directions, Original Application is disposed of.

9. A copy of this order be forwarded to PCCF, Government of Madhya Pradesh, Bhopal, State Wetland Authority and Madhya Pradesh Pollution Control Board by e-mail for compliance.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

August 04, 2023
Original Application No.67/2023(CZ)
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