

**Original Application No. 02/2014 (T<sub>HC</sub>) (CZ)**

**CORAM:**

**Hon'ble Mr. Justice Dalip Singh  
(Judicial Member)**

**Hon'ble Mr. P.S. Rao  
(Expert Member)**

**BETWEEN:**

**Srijan "Ek Aasha"  
Secretary Rajesh Dubey,  
S/o Late K.P. Dubey,  
Aged about 38 years,  
R/o 586 Opposite, DSC Lines,  
Vehicle Factory,  
Jabalpur (M.P.)**

**Versus**

1. The State of Madhya Pradesh through Principal Secretary, Dept. of Tourism, Mantralay, Bhopal (M.P.)
2. The District Collector Jabalpur (M.P.)
3. The M.P. Tourism Development Corporation through its Managing Director, Paryatan Bhawan, Bhopal (M.P.)
4. The Divisional Forest Officer, Jabalpur Division, Jabalpur.
5. The Secretary, Ministry of Environment and Forests, Government of India, New Delhi.
6. The Commissioner, Municipal Corporation, Jabalpur (M.P.)

**.....Respondents**

**Counsel for Applicant : None appeared**

**Counsel for Respondent No.6 : Mr. Shivendu Joshi, Advocate on behalf of  
Mr. Sachin K. Verma, Advocate**

---

**Dated : April 2<sup>nd</sup>, 2014**

---

**Delivered in Open Court by  
Hon'ble Mr. Justice Dalip Singh, Judicial Member**

1. This application came to be registered after the original Writ Petition No. 1851/2013 filed by way of PIL was transferred to this Tribunal by the Hon'ble High Court of Madhya Pradesh at Jabalpur.

2. After the petition was transferred and registered here as a Original Application No. 02/2014, notices were ordered to be issued. None has appeared on behalf of the Applicant on the previous dates and today also.

3. We have perused the contents of the application. The Applicant has raised the issue in the present application with regard to the construction of a hotel by the Respondent No. 3, M.P. Tourism Development Corporation (in short 'MPTDC') in the Dumna area near Jabalpur city alleging that precious forest land has been diverted for non forest activity in violation of the provisions of the Forest (Conservation) Act, 1980. It is alleged in the petition that the Dumna area belongs to the Jabalpur Municipal Corporation and a Nature Park has been developed in a portion of the forest. It is further alleged that it is a mixed forest with various species of trees such as Teakwood, Khair, Tendu, Khamer, Umar (Goolar), Bamboo, Palas, Sajha, Baheda, Aonla, Semal, Amaltas, Mango, Neem, Pingara, Arjun etc. He also alleged that in the area wild animals such as Spotted Deer, Barking Deer, Sambhar, Wild Boar, Hare etc. can be seen in sufficient numbers. There is also movement of Panthers in the area.

4. It is alleged that part of the aforesaid Dumna forest land was allotted for the establishment Indian Institute of Information Technology and Data Management (in short 'IIIT DM') Some portion of the land also came to be allotted to Respondent No. 3, MPTDC measuring about 5 hectares by the State Government for construction of hotel. It is also submitted that in Dumna forest area land was also allotted for construction of the Airport at Jabalpur. It is alleged that large number of trees were felled for allowing the construction of the hotel by MPTDC. In para 3.6 of the petition the Applicant has stated that they have been informed that the land in question is not a Reserved Forest. However, they sought the information from the Respondent No. 3, whether any permission to use the aforesaid land for construction of the hotel as required under Section 2 of the Forest (Conservation) Act, 1980, had been sought from the competent authority. It has further been submitted in the petition that the Respondent No. 3 is reported to have informed the Applicant that since the area is not a notified forest and allotment has been made by the State Government no such permission under the Forest (Conservation) Act, 1980 is necessary.

5. The Applicant has stated the petition on the ground that even though the land in question it is a revenue land and not notified as a Forest, permission under Section 2 of the Forest (Conservation) Act, 1980 is mandatory as the land has sufficient number of trees to qualify to be declared as a forest in terms of the orders of Hon'ble Supreme Court in the case of *T.N. Godavarman vs. Union of India* (1997) 2 SCC 267, dated 12<sup>th</sup> December, 1996.

6. The Applicant in para 3.9 of the petition approached the Jabalpur Municipal Corporation seeking the details regarding the ownership of the land and was informed that previously a PIL in Writ Petition No. 18345 had been filed in the year 2010 before the Hon'ble High Court of Madhya Pradesh at Jabalpur

challenging the allotment of the land to the IIIT DM as well as to the MPTDC. The petitioner was supplied with a copy of the order dtd. 16.01.2012 passed by the Hon'ble High Court dismissing the said Writ Petition. The same has been annexed as Annexure P/4 to the Writ Petition. It was alleged that since the Jabalpur Municipal Corporation refused to interfere in the matter, the petitioner approached the Hon'ble High Court with the prayer that :

- (i) *The Respondent No.3, MPTDC may kindly be prohibited from making the construction of a Hotel in the Dumna area by diverting forest bearing land.*
- (ii) *The Respondent No. 2 may kindly be directed to allot some other alternative land to the Respondent No. 3 for construction of the Hotel.*
- (iii) *The Respondent o. 1, 2, 4 and 5 may kindly be directed to not to permit use of forest land for other than forest purpose contrary to section 2 of the Forest (Conservation) Act of 1980*
- (iv) *Any other relief which is fit and just may also be granted by this Hon'ble Court.*

7. The Hon'ble High Court issued notices to the Respondents and the Respondent No.3 filed the reply and *inter alia* submitted that the issue has already been examined by the Hon'ble High Court in PIL Writ Petition No. 18345/2010 filed by one, Shreyas Pandit which came to be dismissed vide order dtd. 16.01.2012. After the reply has been filed by the Respondents the Applicant has raised some more grievances with regard to transfer and allotment of 5 hectares of land to the MPTDC for construction of the hotel which was heard by the Hon'ble High Court and dismissed the Writ Petition. As such it was submitted that on the same grounds and for the same relief against the same party this new Writ Petition is not maintainable on the grounds of *res judicata*.

8. It was also submitted in reply that in the earlier Writ Petition No. 18345/2010, a reply has been submitted by the Respondent No. 3 (R-5 in the

earlier petition) MPTDC, wherein it was specifically stated that the land in question is not a forest land and there was no violation of the directions issued in case of *T.N. Godavarman vs. Union of India (supra)*. It was also alleged that the works which are being executed as per the approved layout plan of the area in question over which the construction is going on, a construction has been made and it had no standing trees. Copy of the reply to the Writ Petition No. 18345/2010 is also placed on record by way of Annexure R-1. In the reply it was stated that the land in dispute belongs to the Municipal Corporation, Jabalpur. It was further stated that MPTDC has requested the District Collector, Jabalpur for transfer of the land upon which the Tehsildar, Panagar was asked to issue notice to invite claims and objections. It was stated that the Tehsildar issued notice on 15.06.2010 inviting objections till 30.06.2010 and after the aforesaid process was completed, the Tehsildar submitted report to the SDO. The Gram Panchayat did not raise any objections to the proposed allotment of the land in question as it was recorded in the name of the State Government. The value of the land as per the guidelines, was assessed at Rs. 4,40,000/- per hectare. On receipt of the aforesaid report, the District Collector sent it to the Divisional Commissioner, Jabalpur with his recommendations and the Divisional Commissioner vide his order dtd. 02.08.2010 approved the allotment with certain conditions. The possession of the land was handed over on 11.08.2010.

9. We are conscious of the fact that the Hon'ble High Court has issued notices in the matter being aware of the aforesaid facts with regard to the earlier litigation. We find that the Applicant in the present petition has placed reliance upon the directions given by the Hon'ble Supreme Court in the case of *T.N. Godavarman vs. Union of India (supra)* with regard to identification of 'forest'. Broadly speaking in the order dtd. 12.12.1996 the Hon'ble Supreme Court directed each State

Government to constitute an expert committee for identification of 'forest' fixing certain guidelines without influenced by the fact of ownership or on whose name the said land exists in Government record. Among the guidelines fixed by the expert committee for the State of Madhya Pradesh are the basic features which stand out that the land should be more than 10 hectares in area having tree growth consisting at least 200 naturally growing trees or more per hectare, then it shall be considered to be a 'forest'.

10. We find that in the instant case the applicant failed to produce any record prepared in pursuance of the report of the expert committee to show that land in question can be considered to be a 'forest'. Be that as it may, this Tribunal having noticed the order of the Hon'ble High Court dtd. 16.01.2012 dismissing the earlier Writ Petition, cannot take a different view from the one already taken by the Hon'ble High Court in the face of the aforesaid order. The Hon'ble High Court in it's order dtd. 16.01.2012 has observed :

*“We fail to understand how the petitioner could be aggrieved with the transfer of land of the Municipal Corporation to IIT and the Madhya Pradesh Tourism Development Corporation. If the Municipal Corporation is aggrieved with the transfer of its land, it is free to resolve the dispute with the IIT and Madhya Pradesh Tourism Development Corporation or with the State Government. The Municipal Corporation also does not suffer from any disability from approaching the court for relief” .*

The Hon'ble High Court also noted the fact in the earlier part of order dtd. 16.01.2012 as follows :

*“It is to be noted that the IIT on the transferred land after substantial construction work worth many crore has already become functional and is serving larger public interest. The Madhya Pradesh Tourism Development Corporation has also constructed a Cafeteria on the transferred land which is running successfully with the cooperation of forest department. It too is serving larger public interest by providing substantial tourism.”*

The Hon'ble High Court had earlier in its order has also noticed the fact that Division Bench of the Hon'ble High Court despite having heard the matter on 16.12.2011 did not consider it necessary to stop the construction work which was being carried out as it was informed that 'that there is no proposal to fell any tree.'

11. Since in the present matter, as have been noticed herein above, the issue was raised before the Hon'ble High Court and it was finally decided regarding the ownership and status of the land and also the fact that no damage to any standing tree was going to be caused and no trees were to be cut on the area on which the construction was being raised, the Hon'ble High Court declined to interfere and dismissed the petition. This Tribunal therefore looking into the facts and circumstances of the case, is unable to proceed in the matter in view of the aforesaid judgment and the principle of *res judicata*. **In the facts and circumstances this Original Application No. 02/2014 accordingly stands dismissed.**

12. However, as has been noticed in the order of the Hon'ble High Court it has been stated by the Counsel appearing before the Hon'ble High Court that no trees are going to be felled. The aforesaid undertaking shall be observed and it will be the responsibility of the Forest Department to ensure that no damage is caused either by any of the Respondents or by the guests visiting the hotel constructed by the Respondent to any flora and fauna and no disturbance is also caused to the wildlife habitat in case as alleged by the petitioner that sufficient number of wild animals exist in the area. The Respondent No. 3 shall place hoardings and sign boards indicating to the guests and other person & visiting the area cautioning them not to disturb wildlife or cause damage to the vegetation in the area. All such necessary directions shall be taken in consultation with the Respondent No.4, the Divisional Forest Officer, Jabalpur who shall also ensure regular patrolling in the

area by the Forest Guard for the aforesaid purpose and the expenses to be borne by MPTDC. We find from the photographs that were placed on record as Annexure P-3, that apart from the area over which the construction was sought to be raised, certain patches of land are found bereft of any vegetation. The Respondent No. R-3, MPTDC along with the Respondent No. 4 the Forest Department shall undertake extensive plantation of trees of local species to maintain greenery and improve the environment in the surroundings.

13. The MPTDC shall strictly follow the Municipal Solid Waste (Management & Handling) Rules, 2000 and dispose the solid waste and sewage in the premises duly following the prescribed norms. Precautions for controlling fire and declaring it as a non smoking zone and prohibiting carrying of match boxes / lighters, and fire arms shall be taken up. Putting of proper fencing around the hotel premises or even construction of compound wall all round, shall be undertaken.

14. If MPTDC closes down the hotel at any point of time, it shall not transfer or sublet the same to any third party without obtaining NOC from the Forest Department.

15. The Forest Department shall conduct census of all the existing trees in the premises and surroundings and it shall be the duty of the MPTDC to ensure their protection and survival. The Forest Department to monitor the protection of all such trees and wildlife in the area.

16. With the aforesaid precautions to be taken by the Respondent No. 3 & 4, we dispose of this Application *ex-parte*. No order as to costs.

**(Mr. Justice Dalip Singh)**  
**Judicial Member**

**Bhopal**  
**April 2<sup>nd</sup>, 2014**

**(Mr. P.S.Rao)**  
**Expert Member**