

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

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**Original Application No.167/2014
(M.A No.599/2014)**

In the matter of:

Lt. Col. (Retd) Sarvadaman Singh Oberoi

S/o Late Capt H.S. Oberoi
R/O 1102/Tower 1,
Uniworld Garden, Sector 47, Gurgaon,
Haryana 122018

Versus

1. Union of India,

Through the Secretary
Ministry of Environment, Forest & Climate Change
Indira Paryavaran Bhawan, Jor Bag Road
New Delhi-110003

2. State of Haryana

Through its Chief Secretary
4th Floor, Haryana Civil Secretariat,
Sector-1, Chandigarh-160001

3. Department of Town and Country Planning

Through Principal Secretary,
New Haryana Secretariat,
Sector 17, Chandigarh-160017

4. Department of Forests

Government of Haryana
Through principal Secretary,
Haryana Civil Secretariat, Chandigarh-160001

5. Revenue Department

Government of Haryana
Through Financial Commissioner Revenue,
Haryana Civil Secretariat, Chandigarh-160001

6. Kenwood Mercantile Private Ltd

Regd. Office: H.NO.350, Gali No.13, Near BS Pump Wali Gali,
Mahohar Nagar, Gurgaon-122001

7. Goodfaith Builders Pvt. Ltd

1/35A Vasant Vihar, New Delhi-110057

8. Nandak INFOCOM (or INFROCOM) Pvt. Ltd
35 Radheshyam Park, New Delhi

9. Assistant Collector 2nd Grade, Faridabad
Government of Haryana
Mini-Secretariat, Sector 12, Faridabad-121007

10. Deputy Commissioner, Faridabad
Government of Haryana
Mini-Secretariat, Sector 12, Faridabad-121007

Counsel for Applicant:

Mr. Rahul Choudhary, Ms. Meera Gopal, Adv.

Counsel for Respondents :

Ms. Panchajanya Batra Singh, Adv for respondent No. 1
Mr. Anil Grover, (AAG), Mr. Rahul Khurana, Adv for respondent
no. 2 to 5, 9 &10
Mr. Pinaki Mishra, Sr. Adv, Ms. Rakhi Ray, Adv for respondent
no. 6 to 8
Mr. Gopal Jain, Sr. Adv, Ms. Stephanie, Mr. Lochi Ram, Sonane

ORDER/JUDGMENT

PRESENT:

Hon'ble Mr. Justice M.S. Nambiar, (Judicial Member)
Hon'ble Mr. Justice Raghuvendra S. Rathore, (Judicial Member)
Hon'ble Prof. A.R Yousuf, (Expert Member)
Hon'ble Mr. Ranjan Chatterjee, (Expert Member)

Reserved on: 24th February, 2016
Pronounced on:17th March, 2016

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

3.
Justice M.S Nambiar, (Judicial Member)

1. The Application is filed under Section 14 of National Green Tribunal Act, 2010 for declaration that the proceedings before the Assistant Collector, with respect to change in girdavari from "gair mumkin pahar" to agriculture with respect to khasra numbers and mustil/kila numbers listed in the application is illegal, null and

void and for directing respondent 2, the State of Haryana not to change land use of Aravalli gair mumkin pahar in any land records and to declare the entire hilly area of mangar village including gair mumkin pahar area as deemed forest under Section 2 of Forest (Conservation) Act, 1980 and also for restoration of tree cover where the road has been attempted to be constructed.

2. Applicant is a resident of Gurgaon, Haryana and claims to be a person working for the protection and conservation of Aravalli Hills for the last several years. Respondents 6 to 8 claim to be the owners of approximately 440 acres of land and out of it 125 to 175 acres fall in Manger Bani sacred forest and the rest is in the surrounding areas recorded in the revenue records as “gair mumkin pahar” It is contended that gair mumkin pahar is one of the categories of land which is identified as Aravalli Hills and protected under Aravalli Hills Notification dated 07, May 1992. The Mangar Bani and areas falling within gair mumkin pahar in village Mangar are parts of Aravalli range which is covered with herbs, shrubs and trees. It is rich in flora and fauna biodiversity. The area claimed by respondents 6 to 8 is predominantly covered by open dense forest. It satisfies all the criteria of a forest. Respondents 6 to 8 made application before Assistant Collector on 11-01-2014 claiming that their land, recorded as gair mumkin pahar in the revenue records, is agricultural land and prayed to change the land use in the revenue records. They file about 90 applications for different parcels of land. Thereafter, notices were issued inviting objections by the Assistant Collector in Dainik Bhaskar News paper dated July 17,

2014. Applicant came to know about the applications from the said public notices. Applicant submitted preliminary objections before the Assistant Collector asking for copy of the applications. On getting the copy of the applications, applicant came to know of the attempt. Respondents had also broke a small area using tractors, removed the natural vegetation cover including shrubs to make the forest an agricultural area. News papers like Times of India published the news that more than 50 trees were axed to form a road. The Tribunal in O. A 269 OF 2013, Haryali welfare society vs. Union of India has directed that “The State Government is also directed not to issue any permissions permitting fragmentation of the areas falling in village Mangar, gair mumkin pahar” and later in that case MoEF and State of Haryana set up a joint committee to identify the forest as per Lafarge Umiam Pvt LTD Vs Union of India ((2011)7 SCC 338) to submit a report identifying the forest areas. By letter dated 10-12-2011, the Deputy Commissioner, Faridabad addressed to the Financial Commissioner and Principal secretary, Town and Country Planning department had proposed protection of Aravalli gair mumkin pahar area and its exclusion from the agriculture zone. The then Conservator of Forest by letter dated 23-01-2008 informed respondent no 6 that even if the forest cover is destroyed and ownership changed to private land, the area will be treated as forest. It was also informed that non-forest activity is not permissible in the area. Allowing agriculture and construction of roads in the Aravalli areas of Mangar will open the unfragmented jungle south of Gurgaon- Faridabad road to traffic and colonization.

The attempt of the State Government initiating change of land use in girdavari and other revenue records from gair mukin pahar to agriculture is violation of Forest Conservation Act. Applicant sought the reliefs contending that the Aravalli area is a forest and was notified under Section 4 of Punjab Land Preservation Act 1990 and though the State of Haryana has not completed the process of identifying the areas which are forests it is in any event a deemed forest.

3. Respondent no 1, the Ministry of Environment, Forest and Climate change (in short MoEF) in their reply submitted that pursuant to the directions by the Tribunal in O.A. 269 of 2013, meetings of Principal Chief Conservators of Forest of the states and Union Territories were held and draft parameters for classification of an area as forest were formulated. A comprehensive list of areas which shall mandatorily be treated as forest for the purpose of Forest Conservation Act has also been prepared. Keeping in view the countrywide implications of these parameters, MoEF decided that it will be prudent and desirable to obtain formal comments of State Governments and Union Territories before finalizing it. Accordingly, copy of the record of discussions was forwarded to them to furnish their comments so as to finalize and file before the Tribunal. After taking into account the comments received from them, they have further amended the draft parameters for classification of the area as forest by dictionary meaning for the purpose of the Forest Conservation Act. This was considered in a meeting held under the chairmanship of the Minister, wherein it

was decided to get the opinion of Attorney General of India and once it is received back it will be placed before the Tribunal.

4. Respondent no 2 , the State of Haryana in their reply stated that 90 cases were filed before the Assistant Collector for change of girdavari of village Mangar Tehsil Faridabad on 11-07-2014 and they were later withdrawn on 10-09-2014. In their applications respondents 6 to 8 stated that they are the owners of approximately 440 acres and out of it 90 acres are shown as chahi land in the girdaviri of the year 2009-2014 and Honorable Supreme Court, in M.C Mehta Vs Union of India passed the order and the state is not permitting any mining activities in the area. For the Revenue and Disaster Management of the State, the Deputy Commissioner Faridabad had issued directions on 07-04-2015 and given an undertaking that all the said lands in which land use has been changed as per the revenue records, shall be retained as it is and no change will be recorded in the girdawari till decisions are taken in identifying the forest area.

5. Respondent no 3 in their reply stated that the department has not granted any permission to change forest lands to agricultural lands.

6. Respondents 5, 9 and 10 in their reply contended that respondents though filed 90 applications they were all withdrawn by them on 10-09-2014. Those applications show that the 90 acres are shown as chahi land in the girdawari.

7. Respondent no 4 in the reply stated that out of 4262 acres of land in village Mangar 1132 acres is notified under sections 4 and 5 of Punjab Land Preservation Act by Govt. of Haryana on 11-02-1970. While disposing I.A 828,833,834-835,837-838,839,840,846 and 847, the Hon'ble Supreme Court directed that no mining will be permitted in the areas for which Notifications under Sections 4 and or 5 of Punjab Land Preservation Act have been issued for regulating the breaking up of the land etc and such lands are or were recorded as forests in government records even if the notification period has expired unless there is approval under Forest Conservation Act. Again in M.C. Mehta Vs union of India it was directed that in view of the notification under Section 4, when clearing or breaking up of land is not permitted that itself is a bar from fresh constructions because construction can take place only if clearing and breaking up of an area/land take place. Following the judgement, the Forest department has been protecting the areas which were notified under Section 4 and 5 of Punjab Land Preservation Act, irrespective of the fact whether the notification under the Act is in force or expired. The entire revenue estate of village Mangar is covered by Notification S.O 8;121/PA.2/1900/S.4/2013 dated 04-01-2013 which imposes restriction on tree felling without obtaining permission from Divisional Forest Officer. Respondent no 6 was found doing land filling and road cutting using earth mover in khasra no 33 and 34 of Mangar village, which is a forest land as per the order of the Hon'ble Supreme Court dated 18-03-2004. The offender had also

illegally cut trees without obtaining permission of the Forest Department. The Forest Department has issued a damage report (forest offence report) for commission of forest offence against the offenders and sent for prosecution before Special Environment Court, Faridabad. A portion of land for which respondents 6 to 8 had applied for change of land use is the land where forest department has raised plantations under Aravalli Afforestation Project. Most of the khasra numbers in the list filed by the applicant along with the Application falls in Aravalli hills and included under category of Gair mumkin pahar, which is thickly stocked with trees. Continuity of Aravalli hills is very crucial as it acts as a wildlife corridor for free movement of wild animals between Sariska in Rajasthan to Delhi ridge area. Any attempt to tamper with the hill eco-system will have its adverse repercussions in the ground water profile of the region leading to acute water shortage.

8. Respondents 6 to 8 had filed M.A No. 711 of 2014 to delete them from the array of respondents contending that the 90 applications filed by them stood withdrawn on 10-09-2014 and therefore the relief sought for against them do not survive.

9. Vide order dated November 19,2014 the M.A was allowed recording their submission that they would use the land only in accordance with law, including in respect of cutting of trees and making it clear that ultimately they would be bound by the final decision. After the said order, MoEF and Forest Department were directed to carryout independent study including tree survey,

photography and videography in order to create an objective and photographic base line of the tree and under growth vide order dated April 15, 2015. Respondent no.6 to 8 thereafter sought to continue as respondent in spite of the previous order deleting them. Vide order dated July 7, 2015 it was allowed respondents 6 to 7 were permitted to continue as respondents 6 to 8. The report after the study was also submitted. Mr. Pinaki Mishra, the learned counsel was also heard during the final arguments. The learned senior counsel submitted that they would abide by any decision in the matter, including the liability to pay environmental compensation if any awarded.

10. As is clear from the facts narrated earlier, most of the prayers in the application have already been satisfied. The main prayer was against the 90 applications filed before the Assistant Collector, Faridabad. As all those applications were already withdrawn the said prayer does not survive. The second prayer was on changing the land use contending that it is being changed from forest to agricultural lands. Applicant has sought a direction to the State of Haryana to refrain from changing the land use. The Forest department of the State through the Deputy Conservator of Forest by the status report dated 04-02-2015 admitted that out of 4262 acres of land in village Mangar 1132 acres is notified under Sections 4 and 5 of Punjab Land Preservation Act vide Notification dated 11-02-1970 and by virtue of the decisions of the Honorable Supreme Court it is forest. It is also admitted that most of the khasra numbers in Aravalli hills are included under category of

Gair mumkin pahar and is thickly stocked with trees. It is also submitted that Aravalli hills is very crucial as it acts as wild life corridor. In the light of these unambiguous statements no further direction is necessary. Hence vide order dated February 08, 2015 it was recorded that Learned counsel appearing for the applicant submitted that “prayer no. 1 does not survive as respondents 6 to 8 have already withdrawn the applications pending before Assistant Collector. The prayer nos. 2 to 4 also do not survive. The learned counsel appearing for the state of Haryana submits that the mischief of changing land records from Gair mumkin pahar to agricultural land was done by a Patwari and after detecting it directions were issued to rectify the same and corrective steps are being taken. It was also submitted that there was no change in the Jamabandi.

11. Hence the only question remains to be resolved is the prayer no. 5 on the restitution of trees and environment.

12. Vide order dated April 15, 2015 MOEF and the Forest department, State of Haryana were directed to carry out independent study including tree survey ,photography and videography in khasra numbers mentioned in Annexure A-8 produced along with the application. Accordingly the committee so constituted had filed the report dated 06-07-2015 and it is received on record and accepted.

13. The allegation in the application is that respondents 6 to 8 has broken a small area by use of tractor and removed the natural

vegetation cover including shrubs, in a small area and it was an attempt to construct a road. Based on newspaper reports it was also alleged that they have axed more than 50 trees. A photograph was also filed to show the breaking up of the land for constructing the road. The status report filed by the Deputy Conservator of Forest establishes that respondent number 6, M/s Kenwood Mercantile Company Pvt. Ltd was found doing land filling and road cutting using an earth mover in the land in khasra nos. 33 and 34. It was also alleged that they illegally cut the trees without obtaining permission from the Forest department. The forest offence report 500/49985 produced by them shows that the area was inspected on August 29, 2014 and it was found that using JCB and Truck, the company has constructed an approach road to the land of the company and for that purpose trees of mesquite, pilkhan, ronj and dhak species numbering 45 were cut. Mr. Anil Grover, the learned A.A.G appearing for the State submitted that prosecution has already been lodged and for the damages caused, the company is liable and the damaged would also be realized. It was also submitted that in view of the prosecution nothing further survives. We cannot agree. Irrespective of the prosecution under the Forest Act when it is proved that they have cut and removed trees without obtaining necessary permission and also constructed the road illegally, applying the Polluter Pays Principle they are liable to pay environmental compensation for degradation of environment. Considering all the relevant facts including the number and nature, species of the trees, the effect of its loss to the environment

respondents 6 to 8 are jointly and severally shall pay an environmental compensation of Rupees one lakh. The amount is to be paid to the Haryana State Pollution Control Board within three weeks. The amount shall be utilized exclusively for the restoration of the environment of the area.

14. In the result the original application is disposed as follows:

- i. Respondents 6 to 8 jointly and severally shall deposit an environmental compensation of Rupees one lakh within three weeks before the Haryana Pollution Control Board.
- ii. Respondent no. 6 shall plant ten times the number of trees felled by them, i.e. 500 saplings of the same species that were cut and shall be responsible for the up keep of these trees for five years.
- iii. The environmental compensation when deposited shall be used only for the restoration of the environment of the area.
- iii. Respondents 2 to 4 shall take appropriate action whenever there is any unauthorized cutting of trees or breaking of the land or any non-forest activity in the forest, including Gair mumkin pahar which is a deemed forest in view of the Notification issued under the Punjab Land Preservation Act and the declaration of the Honorable Supreme Court.

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As the main application is disposed, the miscellaneous application will not survive. It is dismissed.



Hon'ble Mr. Justice M. S. Nambiar
Judicial Member

Hon'ble Mr. Justice Raghuvendra. S. Rathore
Judicial Member

Hon'ble Prof. A.R Yousuf
Expert Member

Hon'ble Mr. Ranjan Chatterjee
Expert Member

New Delhi,
March, 2016

NGT