BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

.....

Original Application No. 309/2013

In the matter of:
National Green Tribunal Bar Association
Through the Secretary
Trikoot II
Bikaji Cama Palace
New Delhi

.....Applicant

Versus

1. Union of India
   Through Secretary
   Ministry of Environment & Forest
   Prayavaran Bhawan, CGO Complex,
   Lodhi Road, New Delhi-110003

2. State of Uttranchal
   Through Chief Secretary
   Department of Environment and Forest
   Uttranchal Secretariat, Dehradun
   Uttrakhand- 248006

3. Divisional Forest Officer
   IT Cell, PCCF Office,
   87-Rajpur Road,
   Dehradun, Uttrakhand-248001

4. VS Sidhu
   IPS Officer
   Police Officers Colony
   Kishanpur, Dehradun
   Uttrakhand-24800

.....Respondents

Counsel for Applicant:
Mr. Raj Panjwani, Sr. Adv along with Mr. Rahul Choudhary, Adv and Ms. Richa Relhan, Adv

Counsel for respondents:
Mr. vikas Malhotra, Adv, Mr.M.P Sahay, for respondent No.1.
Mr. Atif Suhrawardy and Dr. Abhishek Atrey,Adv, Ms. Babita Tyagi, Adv, Mr. Amit Kumar Singh, Adv, Mr. Prateek Dwivedi, Mr. Brijesh Panchal and Mr. Aishwarya Shandilja, Adv, Mr. U.K Uniyal, AG for respondent No.2& 3
Mr. K.R Chawla and Mr. Sunil Verma, Adv, Mr. Ravi Gupta, Adv, Mr. Ajay Gulati, Adv for No. 4
(Mr. Kumar Anurag Singh, Adv, State of Jharkhand
Mr. P.L Gautam, Adv for NDMC)

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)
Hon'ble Dr. D.K Agrawal (Expert Member)
Hon'ble Dr. R.C Trivedi (Expert Member)

Dated : 29th September, 2014

JUSTICE M.S Nambiar (JUDICIAL MEMBER)

Application No. 309/2013

1. This application is filed under section 14 of the National Green Tribunal Act 2010, by the National Green Tribunal Bar Association, through its Secretary, alleging that respondent No. 4, an officer of IPS cadre in the State of Uttrakhand, encroached and is felling trees from the reserve forest area, seeking an order/direction to the concerned authorities to take appropriate legal action and also to set aside the sale deed executed and registered in favour of respondent 4. The case of the applicant is that respondent No. 4 got executed a fraudulent sale deed in his favour by one Nathu Ram and thereby purchased land declared as reserve forest vide Notification 6789/54 Kh-20 (382) 69 dated 1.05.1970, falling in Mussoorie Forest Division, and later got mutation of the land in his own name which came to the knowledge of the applicant only in 2012. It is further alleged that 4 saal trees from the said land were illegally felled and while the matter was being investigated, on 18.03.2013, another 21 saal trees were again felled from the same area and the Forest officials had recovered

them on the spot. It is contended that respondent No. 4 got executed the sale deed in his favour in violation of the provisions of the Forest Conservation Act, 1980 and the illegal felling of the trees causes adverse impact on the environment and therefore, respondent No. 4 is liable to pay compensation for the damages caused.

2. Respondent No. 2, the Chief Secretary of State of Uttrakhand, in his counter affidavit admitted that vide notification 22.02.1968, the land of Village Dhakpatti plot No. 3/1 measuring an area of 15.23 Acres and Plot No. 1/1 of village Birgiwali measuring 3.86 Acres, were proposed to be declared as reserve forest and thereafter vide notification 6789/54-Kh dated 01.05.1970, the said land was notified as reserve forest. It is also admitted that on 09.03.2013, 4 saal trees *(Shorea robusta)* were illegally felled in the reserve forest area and the materials were seized on the spot by the field staff of Mussoorie Forest Division. Again on 18.03.2013, 21 saal trees were felled and investigation started on the same day. In the course of the investigation it came to the knowledge of the Enquiry Officer that the reserve forest area, from which the saal trees were illegally felled, was purchased by respondent No. 4 by sale deed dated 20.11.2012 and mutation of land was done in his name on 13.03.2013. The investigation prima facie showed that respondent No. 4 had illegally felled the said trees. So criminal complaints No. 1480 of 2013 and 1481 of 2013 were filed before the Chief Judicial Magistrate, Dehradun for the offences punishable under section 26 (f) and (h) of the Indian

Forest Act, 1927 and they were taken cognizance by the learned Magistrate. Respondent No. 4 in turn lodged FIR No. 79 of 2013 before Rajpur Police station against the Divisional Forest Officer, Mussoorie and two others alleging commission of offences under section 420, 120B, 166, 167, and 504 of Indian Penal Code and section 26 of the Indian Forest Act, 1927

3. Respondent No. 3, the Divisional Forest Officer also filed a similar counter affidavit.

4. Respondent No. 4 originally filed a counter affidavit and thereafter a supplementary counter affidavit, denying the allegations and contending that the land purchased by him was never shown as a forest land and he bonafide purchased the same for valuable consideration paying a stamp duty of Rs. 34,07,000/- and after coming to know that the said land belongs to the Forest Department, it was later restored in the name of the Forest Department on 21.09.2013. Vide letter dated 07.05.2013, respondent No.4 requested the District Collector, Dehradun to refund the stamp duty paid. Respondent No.4 also contended that the trees were not felled by him and based on the FIR lodged by him, investigation was conducted and police found that the trees were illegally felled by the DFO and three others and that the respondent is not at all liable for felling of the saal trees.

5. When the matter was taken up, the learned counsel appearing for respondent No. 4 contended that when he is defending a criminal case on the very same allegations that he felled

25 saal trees from the reserve forest and the matter is pending, if the Tribunal is to try the same question, it would cause serious prejudice to his defence in the criminal case. The learned senior counsel argued that even if the judgment in the civil proceeding is as such not binding on the criminal court, any finding rendered in this application by the Tribunal would adversely affect his defence before the criminal court and therefore, the proceedings before the Tribunal should be stayed till the criminal court decides the issue. Reliance was placed on the Constitution Bench decision of the Hon'ble Supreme Court in *Ms. Sherrif and another v. State of Madras and others ((AIR 1954) SCC 397)* and it was argued that as between the civil and criminal proceedings, the criminal matters should be given precedence and if a decision is taken earlier in the civil proceedings, in all likelihood it would cause embarrassment to him, and therefore the proceedings before the Tribunal is to be stayed till the criminal court decides the issue. Reliance was also placed on the following decisions: *Syed Askar Hadi Ali Augustine Imam And Another Vs State (Delhi Administration) and Another, ((2009) 5 SCC 528), Kishan Singh (Dead) through LRS. v. Furpal Singh and Others ((2010) 8 SCC 775)*, and *P. Swaroopa Rani v. M.Hari Narayana alias Hari Babu ((2005) 4 SCC 370).*

6. Mr. Raj Panjwani, the learned senior counsel appearing for the applicant vehemently argued that since the standard of proof required in a civil proceedings is different from the one required in a criminal proceedings and the judgment in the civil proceeding is not binding on the criminal court and the criminal

court has to decide the question only on the basis of the evidence let in before it, therefore, there is no necessity to stay the proceeding before the Tribunal, till the decision in the criminal proceeding. The learned senior counsel also argued that the National Green Tribunal Act was enacted for an effective and expeditious disposal of the cases relating to environmental protection and conservation of forest and other natural resources, including enforcement of legal rights relating to environment. When the proceeding before it, is to be disposed of expeditiously as provided under section 18(3) of the National Green Tribunal Act, if the proceedings before the Tribunal is to be stayed till the disposal of the criminal proceeding, the provision for expeditious disposal would become redundant and therefore, in any case, the proceedings cannot be stayed as sought for by respondent No. 4.

7. The fact that a sale deed was executed in favour of respondent No. 4 for a consideration of Rs. 1,25,00000/- by Nathu Ram, transferring the disputed land in his favour by a registered sale deed on 20.11.2012 and that the land was also mutated in his name, is not in dispute. So also the fact, that subsequently the mutation in his name was cancelled, as the land was found to be part of the reserve forest, declared vide notification dated 1.05.1970. It is also not in dispute that 25 saal trees from the said reserve forest were illegally felled and the Forest Department conducted an investigation and lodged complaints 1480 of 2013 and 1481 of 2013 before Chief Judicial Magistrate, Dehradun against respondent No. 4, for the offences under section 26 (f) and

(h) of the Indian Forest Act, 1927 and the offences were taken cognizance of by the learned Magistrate. Respondent No. 4 filed criminal Revision Petition before the Sessions Court whereby further proceedings in the criminal complaints stand stayed. Respondent No. 4 also lodged FIR 79/2013, before Rajpur police station on 09.07.2013 implicating the Divisional Forest Officer, (DFO) Mussoorrie. The DFO, Mussoorie in turn filed Writ Petition 852 of 2013 before the Hon'ble High Court of Uttrakhand, to quash the FIR 79/2013 whereby further investigation on the FIR was stayed by the Hon'ble High Court by order dated 17.07.2013.

8. The point for consideration is whether the further proceeding in this application before us, is to be stayed till the criminal proceeding initiated against respondent No. 4 is finally disposed by the Chief Judicial Magistrate.

9. Before considering the question, it is necessary to bear in mind certain salient aspects. The standard of proof required in a criminal case is different from the standard of proof required in a civil case. While the charges in a criminal case are to be proved by cogent evidence, beyond reasonable doubt, the civil case can be decided on the evidence, based on preponderance of probabilities. Therefore, while a decision in the civil case could be based on preponderance of probabilities, in a criminal case the charges are to be proved beyond reasonable doubt. The position is made clear by the Hon'ble Supreme Court in *Kishan Singh v. Gurpal Singh and Ors. ((2010) 8 SCC 775)* as follows:

"Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872 dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration".

10. The National Green Tribunal Act was enacted to provide for the establishment of a National Green Tribunal for effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Sub section 3 of Section 18 of the National Green Tribunal Act, explicitly provides that an application or an appeal, or as the case may be, filed before the Tribunal under the Act, shall be dealt with as expeditiously as possible and endure shall be made to dispose of the application or the case as may be, the appeal, within 6 months from the date of filing of the application or the appeal. Hence the

Tribunal is constituted for expeditious resolution of the disputes and not to protract the proceedings.

11. Section 40 to 44 of the Indian Evidence Act provides, when the judgments of courts of justice are relevant and to what extent. Section 43 expressly provides that "judgments, order or decrees, other than those mentioned in sections 40, 41, 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act". Section 40 provides that "the existence of any judgment, order or decree which by law prevents any courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial". Therefore, a judgment under section 40 would be relevant only when the question is whether such Courts ought to take cognizance of such suit or to hold such trial.

12. Section 41 provides relevancy of certain judgments in probate, matrimonial, admiralty or insolvency proceedings. Under the said section a final judgment, order or decree of a competent court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant and such judgment or order is conclusive proof of that legal character, to

which it confers accrued at the time when such judgment, order or decree came into operation and that any legal character, to which it declares any such person to be entitled or accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person.

13. Section 42 provides the relevancy and effect of judgments, orders or decree other than those mentioned in section 41. Under the said section judgments, order or decrees, other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry, but such judgments, orders or decrees are not conclusive proof of that which they state. The illustration provided therein makes it clear that, when A sues B for trespass on his land and B alleges existence of a public right of way over the land, which A denies, the existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

14. Section 44 provides that any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

15. Thus, if the trial of this application is to be preceded before the disposal of the criminal complaints, the judgment in this

application would not be relevant in the criminal proceedings unless sections 40 or 41 or 42 are attracted.

16. A civil suit must be determined based on the evidence which has been brought on record before it and not in terms of any evidence brought in the criminal proceedings. Findings in criminal proceedings are not binding on the civil court and may be relevant only in limited cases. Hon'ble Supreme Court in *Vishnu Dutt Sharma v. Daya Sapra ((2009) 13 SCC 729* laid the principle as follows:

> "23. It brings us to the question as to whether previous judgment of a criminal proceeding would be relevant in a suit. Section 40 of the Evidence Act reads as under:
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> > "40. Previous judgments relevant to bar a second suit or trial. –The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial."
>
> This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for

its relevance is limited. *(See Seth Ramdayal Jat v. Laxmi Prasad.)* The judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding."

17. Hence even if the criminal proceedings are to be disposed of, its judgment is not binding on the Tribunal. Then the question is what is the effect of the judgment in the civil proceedings, on the criminal proceedings.

18. The Privy Council in *Emperor v. Khwaja Naseer Ahmad (AIR 1945 PC 18)* observed:

"It is conceded that the findings in a civil proceeding are not binding in a subsequent prosecution founded upon the same or similar allegations. Moreover, the police investigation was stopped and it cannot be said with certainty that no more information could be obtained. *But even if it were not, it is the duty of a criminal court when a prosecution for a crime takes place before it to form its own view and not to reach its conclusion by reference to any previous decision which is not binding upon it."*

19. Though a Bench of the Hon'ble Supreme Court *in Karam Chand Ganga Prasad v. Union of India ((1970) 3 SCC 694)* had held

that it is a well established principle of law that the decisions of the civil court are binding on the criminal court, and another Bench in *V. M Shah v. State of Maharashtra, ((1995) 5 SCC 767)* had held that 'the findings recorded by the criminal court stands superseded by the findings recorded by the civil court', the earlier Constitution Bench decision in *M.S. Sheriff v. State of Madras and others, (Supra)* was omitted to be taken note of. The Constitution Bench in *M.S Sheriff case (Supra)* held:

> "As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. "

20. Hon'ble Supreme Court in *K.G Premshanker v. Inspector of Police and another ((2002) 8 SCC 87)* taking note of this fact held:

> "32. in the present case, the decision rendered by the Constitution Bench in M. S Sheriff case would be binding, wherein it has been specifically held that no

hard and fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration. The law envisages "such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for limited purpose such as sentence or damages.

33. Hence, the observation made by this Court in V.M Shah case (Supra) that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S Sheriff Case as well as Sections 40 to 43 of the Evidence Act."

21. In *Syed Askari Hadi Ali Augustine Imam and Another (Supra)*, taking note of the decision in *K.G Premshanker v. Union of India (Supra)* it was held:

"25. It is however, significant to notice that the decision of this Court in Karam Chand Ganga Prasad Vs. Union of India, wherein it was categorically held that the decisions of the Civil courts will be binding on the criminal courts but the converse is not true, was overruled, in: (K.G. Premshanker case and held:

"Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court."

22. Thus, it can only be found that the decision in this application if rendered prior to the disposal of the criminal cases, will not be binding on the criminal proceedings pending before the Chief Judicial Magistrate against respondent No. 4. Therefore, he cannot be heard to contend that if the application is not stayed and is proceeded with, it will cause prejudice to him.

23. The Constitution Bench in *M. S Sheriff case (Supra)* declared that law envisages an eventuality of conflicting decisions in civil and criminal proceedings when it expressly refrained from making the decision of one Court binding on the other or even relevant, except for certain limited purposes such as sentence or damages. Though it was observed that civil suit often drags on for years and therefore, it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime and the public interest demand that criminal justice should be swift and sure, and the guilty should be punished while events are still fresh in the public mind and innocent should be absolved as early as is consistent with a fair and impartial trial, it was also held:

"This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For

example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under S. 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

24. Following the Constitution Bench decision *in M.S. Sheriff, (Supra),* in *Iqbal Singh Marwah v. Meenakshi Marwah ((2005) 4 SCC 370)*, Hon'ble Supreme Court held:

"Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

25. In *P. Swaroopa Rani v. M. Hari Haryan Alias Hari Babu ((2008) 5 SCC 765)*, it was held:

'' It is however well settled that in a given case civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceeding or criminal

proceedings shall be stayed depends upon the fact and circumstances of each case".

26. Therefore, it is not the law that for the reason that a criminal proceedings is pending against respondent No. 4, the civil proceedings is to be stayed till the disposal of the criminal proceedings. It all depends on the facts and circumstances of each case.

27. When the judgment in this application cannot operate as binding on the criminal court and the criminal proceedings is to be decided solely on the evidence let in before it, we find no merit in the plea that the decision in this application would either cause prejudice or embarrass respondent No. 4 so as to stay the further proceedings in this application. It is more so when the facts reveal that the criminal complaints filed against respondent No.4 stand stayed on the criminal revision petitions filed by respondent No.4 himself, challenging the cognizance taken by the learned Magistrate and the investigation on the FIR lodged by respondent No. 4 against the Divisional Forest Officer also stands stayed by the Hon'ble High Court.

28. The National Green Tribunal is constituted for effective and expeditious disposal of cases relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment. Sub Section 3 of Section 18 mandates that the application filed before Tribunal under the Act shall be dealt with by the Tribunal as

expeditiously as possible and endure shall be made to dispose of the application finally within 6 months from the date of filing of the application. Therefore, based on the pending criminal proceedings the application filed before the Tribunal cannot be stayed more so when it is well settled that civil proceedings and criminal proceedings can proceed simultaneously. Therefore, on that ground also, the proceedings before the Tribunal cannot be stayed as prayed for. The prayer of respondent No.4 to stay the further proceedings, till the disposal of the criminal proceedings is unsustainable and therefore rejected.

List the application for arguments.

……., CP
(Swatanter Kumar)

……., JM
(M. S. Nambiar)

……., EM
(Dr. D.K. Agrawal)

……., EM
(Dr. R.C. Trivedi)

New Delhi,
29th September, 2014.

सत्यमेव जयते
NATIONAL GREEN TRIBUNAL, NEW DELHI
NGT