

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

ORIGINAL APPLICATION NO. 492 OF 2015

(M.A. NO. 1141 OF 2015)

IN THE MATTER OF:

1. Sh. Sadi Ram
S/o Late Shri Gopal Ram
R/o C-1225,
Sangam Vihar
New Delhi-110080

ALSO AT:

Village : Chokuni
P.O. Chokuni (Ranikhet)
Distt. Almora
Uttarakhand-252645

2. Narayan Ram
S/o. Shri Pani Ram
R/o K-II, 723 Sangam Vihar
New Delhi-110080

ALSO AT:

Village : Chokuni
P.O. Chokuni (Ranikhet)
Distt. Almora
Uttarakhand-252645

.....Applicants

Versus

1. Union of India
Through the Ministry of Environment & Forest
Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi-110003
2. State of Uttarakhand
Through its Chief Secretary
3. State of Uttarakhand
Through its Forest Secretary
Forest Department Ranikhet,
P.O. Ranikhet, Distt. Almora,
Uttarakhand-252645

4. The Sub-Divisional Magistrate
Ranikhet,
P.O. Ranikhet,
Distt. Almora,
Uttarakhand-252645
5. The Tehsildar
Ranikhet,
P.O. Ranikhet,
Distt. Almora,
Uttarakhand-252645
6. The Patwari
Village: Chokuni
Ranikhet,
P.O. Ranikhet,
Distt. Almora,
Uttarakhand-252645
7. Mrs. Vandana Upadhyay
W/o Shri Vijay Sheel Upadhyay
Mangoli Garden, Purani Abkari,
Ranikhet,
P.O. Ranikhet,
Distt. Almora,
Uttarakhand-252645

ALSO AT:

Village : Karo,
Distt. Balia,
Uttar Pradesh

8. Shri Vijay Sheel Upadhyay
Mangoli Garden, Purani Abkari,
Ranikhet,
P.O. Ranikhet,
Distt. Almora,
Uttarakhand-252645

ALSO AT:

Village : Karo,
Distt. Balia,
Uttar Pradesh

.....Respondents

COUNSEL FOR APPLICANTS:

Mr. Sudeep Dey and Ayushya Kumar, Advocates.

COUNSEL FOR RESPONDENTS:

Mr. Attin Shankar Rastogi, Advocate for Respondent No. 1
Mr. Rahul Verma, AAG for Respondent No. 2 to 6
Mr. D. Bharathi Reddy, Advocate for Respondent No. 3
Mr. Mani Gupta, Advocate for Respondent No. 7 & 8
Mr. Sarthak Chaturvedi, Advocate for Andman & Nicobar

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Dr. Justice Jawad Rahim (Judicial Member)

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

Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Reserved on: 13th February, 2017

Pronounced on: 7th March, 2017

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?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

FACTUAL MATRIX OF THE CASE

The villagers of Village Chokuni, District Almora, Uttarakhand also having their residence at Sangam Vihar, New Delhi, have approached the Tribunal under Section 14, 15 and 18 of the National Green Tribunal Act, 2010 (for short, Act of 2010) praying that the official respondent authority should be directed to take appropriate legal action against the private respondents for illegally starting the construction activity, illegal cutting/felling of trees and for undertaking mining operations without seeking Environment Clearance (for short, EC) in village Chokuni. Further, praying that the authorities should be directed to conduct a Cumulative Impact Study of illegal deforestation in the area and the said private respondents be restrained from cutting of trees or encroaching

upon the forest land in village Chokuni. They have also prayed that the said respondent be directed to refill the earth with environment friendly material and for restoration by replanting the trees in the entire area. The applicants make the above prayer on the factual premise that they and their forefathers were residents of the mentioned area for the last 70 years. Nearly 30-35 years ago, some land in the village was given to the Forest Department of the State for plantation of the trees. The Forest Department after taking the possession of the land, demarcated it by constructing boundary walls. The Department had planted large number of trees in the demarcated area which was shown as a forest area. All the villagers of village Chokuni accessed the National Highway including villagers from village Mouna and Mawan, through the land given to the Forest Department, even the children going to schools used the same passage. The land of the Forest Department and the private land are full of pine and other type of trees. In the year 2014, the respondent Nos. 7 and 8 who are not the natives of that village got sale deeds executed in their favour from September 2014 to November 2014, in respect of some of the privately owned lands. The sale deeds do not precisely state about the land. In the sale deeds it was stated that there are six pine trees which were located on the land and which are subject matter of the sale also and they were sold for Rs. 30,000 each under each sale deed. It is the case of the applicants that the respondents have cut hills and carried out excavation without any approval or permission from the concerned authorities for construction of a private road to connect the proposed Yoga Centre "Sri Mahavtar Manav Seva Dham" to

National Highway No. 87. In this process, the respondents had used heavy machines such as JCB which caused damage to the soil of the area. The illegal and unauthorised construction activity carried out by the private respondents, besides causing environmental damage/degradation, has also resulted in damage to the private property where cracks have been developed in the walls. The applicants then went to their native village where they found that respondent no. 7 and 8 have raised a 100 metre long, 6 to 10 feet high and 4 feet wide wall on the forest land. The activities carried out by the said respondents also pose a serious threat of landslides in the area. On receipt of complaints, respondent no. 4 deputed Tehsildar of the area, Ranikhet i.e. respondent no. 5 to conduct an enquiry regarding the complaints of the villagers. Respondent no. 5 on his visit dated 8th September, 2015 found that tens of trees have in fact been cut down and illegal mining activity has been carried out by respondent no. 7 and 8. This was confirmed by respondent no. 5 in the presence of various villagers. The respondent no. 5 had directed private respondents to stop construction and not to occupy or construct boundary in the forest area. It was further assured that the road leading to the village will be concretized. The report submitted by respondent no. 5, despite many requests, was not made available to the applicants, which compelled them to submit another memorandum dated 21st September, 2015 by fax to the District Magistrate of the District Almora in Uttarakhand, and again requested for the action required to be taken against the respondents. The authorities were not taking any action despite the complaints made.

2. According to the applicants, more than 200 trees have been cut/fell by the respondents for the purposes of carrying on the activity in question. According to the applicants, the area in question is a seismic zone and is prone to natural calamity.

Being influenced by respondent no. 7 and 8, the authorities did not take any action and tried to cover up the illegal and unauthorised activity of the said respondents. It is the case of the applicants that the private respondents have caused damage and degradation of environment, have illegally and unauthorizedly cut trees, carried out the mining activity and construction activity without obtaining permission from any concerned authority.

3. It needs to be noticed at this stage that along with the application, the applicants have placed on record the photographs depicting cutting of the hills, stones and excavation for the purposes of constructing private road and construction of boundary wall in the forest area under the Department. Besides filing on record, the complaint dated 6th September, 2016, the applicants have also placed on record the paper cutting dated 8th September, 2015 in which it was reported that 3 dozen chir trees have been cut in village Chokuni. In the Almora Dainik Jagaran dated 9th September, 2015, it had also been reported that 27 stumps of pine trees were found on the measure land i.e. the land in question. A copy of the complaint made by the applicants to the District Magistrate, Almora has also been placed on record where the earlier memorandums dated 7th of September, 2015 as well as the reference to the site visit and various newspapers have been made

and the authorities were requested to take action against the said respondents.

4. The Divisional Forest Officer i.e. respondent no. 3 has filed a detailed affidavit in reply. At the very outset it has been stated that the Forest Department took action against illegal cutting of trees on the private land in accordance with the provisions of the Uttar Pradesh Protection of Trees in Rural and Hill Areas Act, 1976 (hereinafter referred as "UP Tree Protection Act"). It is averred that respondent no. 7 and 8 had purchased the land. After receiving the complaints, the Revenue and Forest Department jointly inspected the private land of respondent no. 7 and 8 where 27 stumps of pine trees were detected and consequently the Forest Department registered a Criminal Case No. 8/Ranikhet/2015-16. The case was registered against the owners of the private land as they had not taken any permission to fell the pine trees growing in khasra No. 38 and 56 at Mauza Chokuni. Total 27 trees have been cut at the private land and the stumps thereof were detected at the time of inspection, on 8th September, 2015.

5. *Vide* letter dated 6th February, 2016 Tehsildar, Ranikhet wrote to the Joint Magistrate, Ranikhet in response to the letter of District Collector, Almora dated 12th January, 2016, reference was made to the directions of the Hon'ble Supreme Court. After noticing the complaints made by the villagers, it was also noticed that the buyer was in possession of the land and some parts of the land was being levelled for construction of building and security walls. It was all through stated that there were 27 stumps of pine trees wherein

roots of 7 trees have been cut recently and 20 appeared to be old. These 20 trees were cut by the villagers for their personal use and for burning the wood and 7 trees of chir were cut at the site only some days ago. No wood was found at the site and in consequence of felling of 7 trees, fine of Rs. 10,000/- was fixed which was recovered from Smt. Vandana Upadhyay. At the site, no encroachment or JCB machines were found. It also emerged that at present, the current route is safe for coming and going. No construction was being carried on when the matter was under surveillance and they had also been warned not to cut any trees.

The Tribunal *vide* its order dated 5th September, 2016 had directed the State Government and other Private Respondents to file a comprehensive affidavit dealing with the following:

- “The description of land-Whether the area covered up by dense forest (trees) can be described as an agricultural land?
- What were the sanctioned building plans and what was the plan for the sanction, if any?
- What was the basis for coming to the conclusion that seven trees had been cut/felled and the remaining 20 trees were cut earlier? If so, by whom and whether the permission for felling the trees including seven stated to be cut and felled by private respondents was ever taken by the department?
- The state shall particularly describe as to how the construction activity in such area is being permitted and whether its adverse impact on environment and ecology has been considered by the authorities at all.”

After passing of this order, a joint enquiry was conducted. Upon inspection by the joint inspection team, it was submitted to the Tribunal that the land is not a forest land but a private land of

Mauza Chokuni, Tehsil Ranikhet, District Almora, Uttarakhand. No permission had been issued by the Divisional Forest Officer, Almora under the UP Tree Protection Act for cutting or felling of any tree. In fact, no such permission was sought and a criminal case was registered against the private owners.

6. Respondent Nos. 2, 4 and 5 in furtherance to the above order of the Tribunal dated 5th September, 2016, filed a common response/reply on similar lines. It was stated that under Municipality Cantonment Board or in regulated areas, there is a requirement to take prior permission of the competent authority for construction and approval of proposed building plans. As the land is under a rural area, there is no rule or policy to get the plans approved. Respondent no. 6 filed three separate reply affidavits on 4th March, 2016, 17th August, 2016 and 21st November, 2016. According to respondent no. 6 i.e. the Patwari of the area, it is admitted that a representation was made by the villagers, which had been received in their office. The averments made in these affidavits are also on similar lines as stated by Respondent no. 3. However, it is stated that Respondent no. 7 was trying to encroach upon government land but he was prevented from doing so and the said government lands were vacated in presence of the villagers. Subsequently, there was no encroachment made by Respondent no. 7 and 8. An outsider may purchase land measuring more than 1 naali 4 muthis (0025 hectares) for religious, medical, cultural or educational institution under section 154(3) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter

referred as “UP Land Reforms Act”). 27 trees have been cut but after the date of inspection on 7th September, 2015, no tree had been cut and no construction work has been carried on at the site. In furtherance of the order of the Tribunal dated 28th July, 2016, it has been submitted that the purchasers were actually in possession of Khasra no. 2552 of Khata no. 38 and not Khasra no. 2553 as mentioned earlier. The wrong entry in the Khata number was ordered to be corrected by the Tehsildar on 5th July, 2016 and the same has already been corrected. The lands purchased by the Respondent nos. 7 and 8 are classified as category 1A Bhumidari under the provisions of the UP Land Reforms Act. The land has been barren for last several years in which pine trees have grown upon the land naturally. It is reiterated that Respondent no. 7 and 8 had not submitted any building plans and there were no sanctions to building plan. The said respondents had been engaged in activity of levelling the land and construction of boundary wall for the purpose of Dhyani Yog Kendra (Yoga Meditation Centre) for religious purposes. Respondent nos. 7 and 8 filed common affidavit and replies on 12th July, 2016, 1st November, 2016 and 22nd December, 2016. These reply affidavits had been filed by these respondents themselves and in furtherance of the orders of the Tribunal which have already been referred above.

7. According to these respondents, the applicants have no *locus-standi* and it is also denied that the applicants are interested in the protection of the environment and ecology of the area. The applicants have been using a part of the land of Respondent nos. 7

and 8 as their passage and they have been filing frivolous complaints and have published defamatory articles in the local newspaper. It is also denied that there is any substantial question relating to the environment and therefore, the application deserves to be dismissed.

On merits it is stated that Respondent nos. 7 and 8 had not encroached upon the public land and the land under their possession is the one which they have actually purchased under the sale deeds. It is a private property for construction of Yoga Meditation Centre and other religious purposes for which they have full Right to enjoy their property. It relied upon the report of the Tehsildar dated 30th November, 2015, wherein it is stated that there is no encroachment. The Respondent nos. 7 and 8 have also relied upon the report dated 30th November, 2015, the relevant extract of the said report reads as under:

“it is found during investigation that buyer has been in possession of field no. 2530, 2531, 2535, 2537, 2339, 2540, 2541 2442, 2553 Madhye Rekba 6 Nalli (0.210 Hect.) and Khaa no. 56 Madhye Khasara no. 2533 M 2534 M 2551 M Rakba 1, 8/16 Nalli (0.030 Hect.) Total 0.150 Hect. Land in J.V.K. Ka. No. 38 at present in village Chakaunni, in which buyer has been constructing security wall and land levelling for the construction of building on the spot by the second party, no cutting and levelling has been made from JCB machine.

It has been informed by the representatives of forest department present at spot that total 27 trees roots in different rounds is present in the purchased land on the spot, in which 20 trees roots have been cutting old and 7 tree roots have been found cutting some days ago, no cutting tree has been found on the spot, it is directed by me to the representative of Forest Department that kindly initiate the necessary proceedings accordingly in respect of the cutting trees.

It is found after matching land records on spot that second party has been trying to trespass the land of State Govt. after including the same with purchased land by the second party, which was vacated in the presence of villagers by the second party, at present second party have no illegal encroachment/possession in the govt. land.

However, no measured way is mentioned in the above land in Bandobasti map in village Chakauuni but it was informed by presenting complainant and other villagers that the villagers public way is located in above land, in which second party has assured the presenting people that he will be left 6 Ft. of rigid way from motor road to his purchased land for public use, which shall be utilised as public purpose in future and presenting complainant and other villagers have shown their approval.

I have informed to both parties presenting on the spot that if they wants to re-verify their land then they can do accordingly.

No hazardous of land sliding is not seem to the houses on the spot on the levelling of land on the spot.

Therefore, report submits.”

8. It is also stated by these respondents that in Civil Suit no 21 of 2015, the District Court, Almora passed an injunction order on 22.9.2015 against carrying on of any kind of mining and construction work on the disputed land and the said matter is still pending. It is denied that they have taken possession of any land belonging to the State. It is stated that use of JCB and heavy machinery which is permitted by the Directorate of Industries of respondent no. 2 are used for levelling of private land belonging to any person and the removal and excavation of soil (not for commercial use) is permitted through government order dated 3rd May, 2014. It is not a mining activity on a private land. These respondents categorically stated that 7 trees had been cut by them without obtaining prior permission of the competent authority.

9. The applicants filed common rejoinders to the reply of Respondent nos. 3 and 6 and a consolidated rejoinder to the reply filed by Respondent nos. 3, 6, 7 and 8 and also filed another rejoinder dated 8th January, 2015 to the reply filed by the Respondent no. 7 and 8. It was averred that Respondent nos. 7 and 8 themselves had admitted that they were using JCB and heavy machineries for leveling the earth. They had also filed on record, photographs of the cracks (Annexure A9), which appeared on the property of the persons as a result of mining and excavation of rocks. They had also encroached upon the government land. The photographs (Annexure A12) of the trees cut down and burnt by the said Respondents were placed on record. According to the applicants, Respondent nos. 7 and 8 had cut 100 trees and buried them under the ground. The stand of the other respondents that the leveling was done manually is not correct. Though, the private respondents had admitted to cutting of 7 trees but the records show that 27 trees have been cut/felled. While the applicant reiterated that the private respondents have cut down 100 trees, during the inspection it was found that 27 stumps of the pine trees of which 20 trees were cut earlier. Inconsistency in the stand taken by the respondents establishes the apathy of the Government officials. District Almora is located in a very sensitive seismic zone and is also prone to flash floods. The trees have been cut, admittedly, without obtaining prior permission from any authority. There are adverse affects of construction activity in the said area upon the environment and ecology which had not been considered by the authorities at all. According to the applicants, there are thick and

dense trees on Van Panchayat land adjoining the land of the private respondents which have grown naturally and the private respondents will also destroy them. Respondent nos. 7 and 8 are still in possession of the government land falling in Khasra No. 2553, which is a Van Panchayat /government land. It is denied that the applicant had no *locus-standi* because the applicants are inhabitants of that area. The applicants were using the land as claimed by Respondent nos. 7 and 8 for thorough fare. The Forest Department had planted a large number of trees in the demarcated portion. Though, these respondents claim that they own land measuring 7 naali and 8 Muthi only, in village Mauna Chokuni, but they are in possession of a much larger piece of land measuring almost 25 nali. The applicants claimed that they have not filed any civil suit. The civil proceeding is filed in respect of three farms on which forceful mining and construction activities are alleged, whereas the present proceedings are for the illegal cutting and felling of trees in the specified area.

10. Before we proceed to examine the merits of the contentions raised by the parties before us with reference to their respective pleadings as afore noticed, it is necessary for us to note that none of the parties had complied with the directions of the orders of the Tribunal dated 5th September, 2016. *Vide* that order, the parties were required to provide the exact description of the land, sanctioned building plans, felling of trees and the number thereof, extent of construction activity carried out on the site in question and finally and most importantly the adverse impacts thereof on the

environment and ecology. Further, they were directed to state whether the Government had taken these factors into consideration or not. Incomplete or deficient replies to these questions do raise serious doubts with regard to bonafide of the claims of the parties, particularly the respondents. However, it is clear from the record that the Respondent nos. 7 and 8 have purchased the land and are in possession of 7 naalis and 8 muthis in Khasra no. 2552 and not Khasra no. 2553. This correction had been made by the Revenue authorities *vide* their order dated 20th July, 2016. There were trees on this land out of which 27 trees have been cut. According to the applicant, they have been cut by the Respondent nos. 7 and 8. According to the authorities, 20 trees were cut some time ago by the villagers for burning of wood, etc., but the remaining 7 trees have been cut by Respondent nos. 7 and 8. As per the Forest Department, they have registered a criminal case against these respondents and also imposed a penalty of Rs. 10,000/- which Respondent nos. 7 and 8 have paid. The Respondent nos. 7 and 8, have also stated that they have cut only 7 trees without any prior permission and have paid the penalty imposed upon them by the authority.

11. Now, we may deal with the objections raised by Respondent Nos. 7 and 8 in particular, that the applicants have no locus-standi; the present application does not squarely fall within the ambit and scope of Section 14 of the Act of 2010; the application is malafide and that these objections are devoid of any merit and, therefore, liable to be rejected. The Act of 2010 has been enacted with the aim

and object of providing expeditious justice to the people raising substantial issues relating to the environment with an inexpensive manner by providing easy access. The underlining feature of the Act is with regard to protection of environment as Right to Healthy Environment has been construed as part of Right to Life in terms of Article 21 of the Constitution of India. In terms of Section 14, 15 and 18, a person who has sustained injury or any person aggrieved including any representative body or organisation, has the right to approach the Tribunal for the relief provided under those provisions. The concept of locus-standi has to be elaborately construed within the ambit and scope of the provisions of the Act of 2010. In fact, *locus-standi* has been explained by a larger bench of the Tribunal in the case of *Goa Foundation v. Union of India* in Original Application No. 26 of 2012, All India NGT Report 2013 (1) Part 5 page 234, as follows:

“25. The very significant expression that has been used by the legislature in Section 18 is ‘any person aggrieved’. Such a person has a right to appeal to the Tribunal against any order, decision or direction issued by the authority concerned. ‘Aggrieved person’ in common parlance would be a person who has a legal right or a legal cause of action and is affected by such order, decision or direction. The word ‘aggrieved person’ thus cannot be confined within the bounds of a rigid formula. Its scope and meaning depends upon diverse facts and circumstances of each case, nature and extent of the applicant’s interest and the nature and extent of prejudice or injury suffered by him. P. Ramanatha Aiyar’s *The Law Lexicon supra* describes this expression as ‘when a person is given a right to raise a contest in a certain manner and his contention is negative, he is a person aggrieved’ [*Ebrahim Aboodbakar v. Custodian General of Evacue Property*, AIR 1952 SC 319]. It also explains this expression as ‘a person who has got a legal grievance i.e. a person wrongfully deprived of anything to which he is legally

entitled to and not merely a person who has suffered some sort of disappointment’.

26. Aggrieved is a person who has suffered a legal grievance, against whom a decision has been pronounced or who has been refused something. This expression is very generic in its meaning and has to be construed with reference to the provisions of a statute and facts of a given case. It is not possible to give a meaning or define this expression with exactitude and precision.

27. In the case of *Maharaj Singh v. State of Uttar Pradesh* (1977) 1 SCC 155, the Supreme Court observed that a legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection or defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer’s allergy to an unpalatable episode. Further in the case of *Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Others* (1998) 7 SCC 270, the Supreme Court, held that although the meaning of the expression ‘person aggrieved’ may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. In *Jasbhai Motibhai Desai v. Roshan Kumar*, AIR 1976 SC 578 the Court held that the expression ‘aggrieved person’ denotes an elastic, and to an extent, an elusive concept. It stated as follows:

“It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner’s interest, and the nature and extent of the prejudice or injury suffered by him.”

28. Section 16 of the NGT Act gives a right to any person to prefer an appeal. These expressions have to be considered widely and liberally. The person

aggrieved, thus, can be a person who has no direct or personal interest in invoking the provisions of the Act or who can show before Tribunal that it affects the environment, and therefore, prays for issuance of directions within the contemplation of the provisions of Section 16 of the NGT Act.”

12. From the above enunciated principle, it is clear that a person who is injured or aggrieved, can bring an application before the Tribunal so far as it raises a substantial question of environment or claim for compensation under the provisions of the Act of 2010. This will be so, even if the injury or grievance has not occurred to the applicant personally, which is the scheme of the Act. The applicants are admittedly residents of the same village and they have been living there for generations. Indiscriminate felling of trees is bound to have adverse impacts on environment and ecology of that area which necessarily includes violation of the constitutional protection available to these applicants. The disadvantages or adverse impacts of felling of trees, without any initiative for afforestation or restoration of the damage resulting from such felling of trees would be impermissible as it would be damaging the nature and environment. There is nothing on record before us to show that the application has been filed malafidely or with ulterior motives. The Civil Suit No. 21 of 2015 instituted, is not by the applicants and in any case the subject matter of those proceedings, including the land concerned is entirely different and distinct. Once the subject matters and reliefs are distinct, the question of present application either being malafide or in abuse of the process of law would not arise at all. The Right of Way is for the entire village and no motive can be attributed to the applicants for approaching the

Tribunal for the reliefs claimed in the application. Resultantly, we have no hesitation in holding that the applicants do have *locus-standi* to file the present application and the same is neither malafide nor in the abuse of the process of law.

13. We have already noticed that 27 chir trees have been cut/fell. According to the applicants, a large number of trees have been cut by the Respondent nos. 7 and 8 but in any case these 27 trees have certainly been cut by them. Nearly 100 trees have been cut/fell in that area. According to the official respondents, nearly 20 trees were felled by the villagers quite some time ago, for use of burning of wood and for their personal purposes. The Respondent nos. 7 and 8 have admitted that they had cut and fell 7 trees without obtaining prior permission from the competent authority under the provisions of the UP Tree Protection Act. The short question that falls for determination is whether Respondent nos. 7 and 8 have cut 7 trees or 27 trees. The trees have been cut without permission of the competent authority. The official respondents have not placed before the Tribunal, any plausible material to show as to when and by whom or which villager had cut those 20 trees. It is the duty of the official respondents to conduct inspections and to ensure that no trees are felled/cut except with specific permission. No report has been placed on record except a vague averment in the report of the Tehsildar which was conducted after filing of the complaints by the applicants and the Gram Panchayat in relation to cutting or felling of trees. The onus was upon the official respondents to show when the 27 trees were cut and by whom. Respondent nos. 7 and 8

have purchased the lands in the year 2014, i.e. nearly a year ago from the date of the inspection which was conducted on 30th November, 2015. If the trees were cut some time ago, certainly Respondent nos. 7 and 8 were expected to know as to who had cut the trees and when, from the property which was in their possession. Respondent nos. 7 and 8 and the official respondents thus have failed to produce relevant evidence which was expected to be in their power and possession.

14. On the basis of 'Polluter Pays Principle' and absolute liability contemplated under Section 17(3) read with section 20 of the Act of 2010, the onus lies on the polluter and not on the complainant. Consequences that flow from the above are that Respondent nos. 7 and 8 would have to be held liable for illegal and unauthorized felling of 27 trees at the site in question. The unauthorized and illegal felling of trees, unaccompanied by afforestation and restoration of the area does have serious, adverse and irreversible impacts on environment. This Tribunal in the case of *Court on its Own Motion vs. State of Himachal Pradesh & Ors.* Original Application No. 237 (THC)/2013, held as under:

“FORERSTS, DEFORESTATION, THEIR IMPACT ON ENVIRONMENT AND REMEDIES:

27. As already noticed, forests of Himachal Pradesh constitute about 2/3rd of the State's geographical area and are the storehouse of rich bio-diversity, vital in preserving the fragile Himalayan eco-system and is a primary livelihood source for rural population. The recorded forest area of 66.43% of the total geographical area is the indicator of the forestry in the State of Himachal Pradesh. Himalayas are one of the youngest mountainous regions of the world where the land mass has not yet found its final form, its eco-system is most fragile, sensitive and susceptible.

28. The area of Gulaba, Marhi and Kothi, once a dense forest, is presently nothing but an area of bald mountains. It has lost its natural beauty and ecology, which is adversely affecting the environment. Forests play a significant role in controlling pollution. Trees help to clean the air borne pollutants such as ozone, NO₂, SO₂, CO, CO₂ and small particulate matter particularly less than 10 microns in size. Variety of reasons have led to extinguishment or considerable reduction of forests. Deforestation, uncontrolled and unsustainable grazing, soil erosion, discharge of industrial and human wastes, effects of climate change on forests in Himalayas, excessive tourism, forest fires and human conflict are inter alia the primary factors, which, with the passage of time, have reduced the forest cover in qualitative as well as quantitative terms. It is the absolute need of the hour that sincere efforts should be made to restore and maintain the forest areas in the larger interest of environment and public benefit. The solution lies in the urgent need to ensure that tourism industry in the State is environmentally benign and the benefits of decentralization are equally distributed, particularly to rural and local households. High density of traffic in the forest area should be controlled. There is a dire need for carrying out reforestation activity rapidly and at a massive scale. Taking adequate and effective measures for prevention and control of forest fires is also another need of the hour. Prevention of deforestation along all slopes, promotion of appropriate cover of trees, shrubs, bushes and grass would further help to prevent soil erosion. Preservation of natural eco-system would also help in enhancing and maintaining the forest cover.

29. Deforestation seriously affects local and regional climates. Forests absorb more of the sun's radiation. Deforestation in the tropics increases surface temperatures, because grasslands are better reflectors of the sun's energy. Research has demonstrated that replacement of tropical forests with grassland increases local air and soil temperature, decreases evapotranspiration and decreases precipitation. The warming from a reduction in evapotranspiration more than compensates for the cooling from the increased albedo. Temperature decreases because of evapotranspiration, which is a cooling process, is reduced by deforestation. Evapotranspiration is reduced, in part because less radiant energy is absorbed (more is reflected), in part because atmospheric turbulence (surface roughness) is greater above a forest than above a grassland and hence can evaporate water more rapidly from forests, and in part because the roots of trees generally penetrate to deeper layers of soil than the roots of pastures, and hence have access to more water. If less

water is available, the vegetation will respond by closing stomata and thereby increasing the resistance to evapotranspiration and increasing temperatures. Preservation of forested land helps reduce local and regional environmental variability. The greatest effect that forest management could have on atmospheric carbon dioxide would be through the elimination of fossil fuels. Gross emissions from burning would be approximately balanced by accumulations in forests producing fuel for the future. Management would have to be sustainable.”

The Tribunal in the case of *Court on its Own Motion vs. State of Himachal Pradesh & Ors.* Original Application No. 488 of 2014 *vide* order dated 20th January, 2015 enunciated the impact of tree felling on environment, which reads as under:

“IMACT OF TREE FELLING ON ENVIRONMENT

Trees play a very important role in maintaining the ecological balance in the biosphere. Since the beginning, trees have furnished us with two of life's essentials, food and oxygen. On an average, one tree produces nearly 260 pounds of oxygen and absorbs up to 48 lbs of carbon dioxide a year. With the evolution of human civilization contribution of trees in making our life comfortable increased several fold, i.e., they provide us necessities such as clothing, shelter, medicine, and tools. Today, their value continues to increase and more benefits of trees are being discovered as their role expands to satisfy the needs created by our modern lifestyles.

Trees contribute to our environment by providing oxygen, improving air quality, climate amelioration, conserving water, preserving soil, and supporting wildlife. During the process of photosynthesis, trees take in carbon dioxide and produce oxygen we breathe. They provide us with fresh air to breathe, shade in summers, food, and other benefits without which we cannot even think of living. Trees control climate by moderating the effects of the sun, rain and wind. Leaves absorb and filter the sun's radiant energy, keeping things cool in summer. Trees also preserve warmth by providing a screen from harsh wind. In addition to influencing wind speed and direction, they shield us from the downfall of rain, sleet and hail.

Trees lower the air temperature and reduce the heat intensity of the greenhouse effect by maintaining low

levels of carbon dioxide. Both above and below ground, trees are essential to the eco-systems in which they occur. Far reaching roots hold soil in place and fight erosion. Trees absorb and store rainwater which reduce runoff and sediment deposit after storms. This helps the ground water supply recharge, prevents the transport of chemicals into streams and prevents flooding. Fallen leaves make excellent compost that enriches soil. In the present day scenario trees in Urban Environments help in muffling the urban noise. In Suburban Environments they help in providing shade canopy and noise buffers and also congenial habitat for suburban wildlife, while in the rural environment they protect the crops from wind, control erosion and create diverse plant and animal habitats.

Despite knowing the importance of trees, human beings are still cutting down the trees and forests have started depleting from this beautiful earth. Deforestation has the following dangers:

- **Destruction of carbon sinks:** Carbon sinks are huge stores of carbon. Large quantities of carbon are trapped by plants in general and trees in particular in the body biomass thereby helping in balancing the carbon dioxide content in the biosphere. Mature trees hold large quantities of carbon. Each acre of the forest has been taking roughly 0.75 metric ton of carbon out of the atmosphere annually, doing its humble part to counteract greenhouse warming [**The Case of Missing Carbon: National Geographic**]. A mature tree can absorb up to 48 lbs of carbon dioxide a year (McAloney 1993). In fact, large trees at maturity can store approximately 1000 times more carbon dioxide than saplings (Nowak 2001). This difference highlights the importance of maintaining large tracts of healthy, mature forest, which will be much more useful in establishing carbon sinks than planting saplings [**Ravin, A & Ranie, T: Best Practices for Including Carbon Sinks in Greenhouse Gas Inventories**].

When a tree is felled and burnt the carbon present in its body gets converted back into carbon dioxide and is released into the atmosphere. Timber extraction may only represent a comparatively small return of carbon to the atmosphere: wood does not release CO₂ until it decomposes or is burnt. The oxidation of leaf litter and surface soil biomass in felled areas will add to net emissions in the short term. Where re-growth or restocking does not take place, there is a potential net loss of 50 t C/ha [**Environmental impacts of land management; Natural England Research Report NERR030; pp 131 – 142**].

- **Soil Erosion:** Deforestation makes soil prone to erosion by agents such as wind and water. The roots of trees hold the particles of soil together, thus preventing the fertile top soil from being carried away. Soil erosion leads to loss of productivity of the land due to loss of mineral nutrients and soil microorganisms
- **Destruction of animal habitats:** Apart from domesticated animals and marine and fresh water animals, all other animals need forests as their habitats. These forests do not only provide a place for the animals to roam around but also provide their food and act as a source of protection from predators through camouflage. Actually each plant/tree provides a unique microhabitat of a great array of macro and microscopic animals and when it is felled these organisms are significantly affected. Destruction of the animals' habitats literally kills the animals.
- **Source for medicine:** Many plants/trees are a source of important medicines used for the treatment of diseases in case of human beings as well as domesticated animals. Destruction of such trees leads to destruction of such medicines.
- **Greenhouse effect and global warming:** Nature balances the flow of energy and nutrients. Trees and forests play a very vital role in the flow of energy and cycling of nutrients like carbon, nitrogen, phosphorus, etc., in the biosphere. Destruction of trees/forests results in the disturbance in the natural balance in the cycling process of various nutrients. For example, recent calculations suggest that carbon dioxide emissions from deforestation and forest degradation (excluding peat land emissions) contribute about 12% of total anthropogenic carbon dioxide emissions with a range from 6 to 17% [**van der Werf, et al. (2009). "CO₂ emissions from forest loss". *Nature Geoscience* 2 (11): 737-738].** Deforestation causes carbon dioxide to linger in the atmosphere. As carbon dioxide accrues, it produces a layer in the atmosphere that traps radiation from the sun. The radiation converts to heat which causes global warming, which is better known as the greenhouse effect. Destruction of forests also causes modification of climate of an area mostly leading to desertification and aridity.
- **Trees, and plants in general, affect the water cycle significantly in a number of ways**

- The tree canopy intercepts precipitation, and a part of it is in the process evaporated back to the atmosphere;
- Tree litter, stems and trunks slow down surface runoff;
- their roots create macropores – large conduits – in the soil that increase infiltration of water;
- they contribute to terrestrial evaporation and reduce soil moisture via transpiration;
- their litter and other organic residue change soil properties that affect the capacity of soil to store water.
- their leaves control the humidity of the atmosphere through the process of transpiration [**Scherer et al (2013) Soil, Water and Plant Characteristics Important to Irrigation, North Dakota State University, Fargo, North Dakota**].

Chopping down vast swathes of forest is known to have an effect on climate, but what is the impact of cutting down a handful of trees? A recent study by Zhang et al. (2014) shows that even small-scale land clearance – a few hectares or less – causes a noticeable change in local temperature. According to climate models, tropical deforestation causes warming, while loss of forest at high latitudes brings about cooling. The transition from warming to cooling occurs at latitude of around 35°. But most land-use change occurs at far smaller scales: To see whether the loss of only a few trees has any impact on the climate of an area Zhang et al (2014) studied 40 locations across North and South America and 12 locations in Eastern Asia [**Zhang et al. (2014). Response of surface air temperature to small-scale land clearing across latitudes. *Environ. Res. Lett.* 9 (3): 7pp**]. They observed that at tropical and subtropical latitudes (15°S to 20°N) local deforestation caused a warming effect of more than 0.5 °C on daily maximum temperature. In boreal latitudes (over 45°N and S) a cooling effect of nearly 1 °C on daily minimum temperature was reported. The team found that small-scale deforestation has the greatest localized warming effect in the tropics – between 10°N and 10°S. After that the impact decreases, switching to a cooling effect at latitude of around 35°.

Research also suggests probable increases in understorey native plant cover and richness after tree overstoreys are mostly or completely removed. As the pattern of the plant cover changes, it affects the composition of the faunal assemblages in the area as well [**Abella, S. R. & Springer, J. D. (2014), Effects of tree cutting and**

fire on understory vegetation in mixed conifer Forests; Forest Ecology and Management (2014)19pp]. Generally, species favoring closed-canopy conditions with larger diameter trees are negatively affected when cutting results in grasslands or oak woodlands with small diameter trees and open canopies. Conversely, species favoring grasslands or very open woodland are positively affected.

Felling of individual trees tends to be most significant outside woodland because the individual trees themselves, particularly veteran trees, are critical to the interest, for example in orchards, hedges and parkland [Read, H. (2000), *The veteran tree management handbook* (Peterborough, English Nature, 2000)].

15. Compensatory afforestation should not only be relatable to the number of trees being planted but should also be relevant with regard to species of the trees that ought to be planted in the interest of the environment. The Hon'ble Supreme Court in the case of *A Chowgule v. Goa Foundation* (2008) 12 SCC 646 observed as follows:

“Some arguments have flown during the course of the hearing that the appellants were willing to reforest an identical area in case the lease was allowed to be effectuated. In this connection, some observations need to be made. The basic question is as to what is implied by the terms afforestation or re-forestation. Is it merely the replacement of one tree with another or does it imply something a little more complex? "Reforestation is the restocking of existing forests and woodlands which have been depleted, with native tree stock, whereas afforestation is the process of restoring and recreating areas of woodlands or forest that once existed but were deforested or otherwise removed or destroyed at some point in the past". In the present case, we are concerned with afforestation and the promise of the appellant to plant trees in an equivalent area. We, however, find from experience and observation that the re-forestation or afforestation that is being carried out in India does not meet the fundamentals and the planting of new trees to match the numbers removed is too simplistic and archaic a solution, as in the guise of compensatory replantation, local varieties of trees are being replaced

by alien and non-indigenous but fast growing varieties such as poplar and eucalyptus which make up the numbers but cannot satisfy the needs of our environmental system. It must be borne in mind that both re-forestation and afforestation envisage a resurrection and re-plantation of trees and other flora similar to those which have been removed and which are suitable to the area in question. There is yet another circumstance which is even more disturbing inasmuch as the removal of existing forest or trees suited to the local environment have destroyed the ecosystem dependent on them. This is evident from the huge depletion of wild life on account of the disturbance of the habitat arising out of the destruction of the existing forest cover.”

16. In light of the above analysis, it is clear that the Respondent nos. 7 and 8 should not only be directed to plant atleast 10 times the number of trees they have felled but also be directed to plant specific species of trees that would serve the ends of environment, keeping in mind the local conditions of that area. There has been some dispute with regard to khasra number but then it is clear that the said respondents are in possession of khasra no. 2552. Another fact which is clear from the record is that, Respondent nos. 7 and 8 are in occupation of area in excess of their sale deeds. They are stated to have encroached upon the government land which is a forest area. It is averred that subsequently, they have released the government land that was in their possession but that fact still remains to be finally determined in the appropriate proceedings where the government authorities are a party. As far as this Tribunal is concerned, it has to examine the case primarily from the point of view of environment and protection of trees. It is also in evidence that Respondent nos. 7 and 8 have constructed a boundary wall which is partly falling in the forest area.

Constructing a brick or concrete boundary wall in the forest area would tantamount to breaking of the forest area which is impermissible in terms of the provisions of the Forest (Conservation) Act, 1980.

17. The negligence and illegal felling of trees by the Respondent Nos. 7 and 8 have resulted in adverse impacts upon the environment and ecology. These respondents would be liable to pay environmental compensation in terms of Section 15 and 17 of the Act of 2010 for illegal felling of trees which, in any case, are atleast 27 in number. It is stated that in the area in question, plans are not required to be sanctioned by any authority. That aspect needs to be examined by the competent authorities under the relevant laws in force. Felling of trees even from non-forest areas is equally an offence and the Hon'ble Supreme Court in the case of *T.N. Godavarman Thirumulpad vs. Union of India* AIR 1997 SC 1228 *vide* order dated 12.05.2001 had clearly stated that even for felling of trees from non-forest areas, including in respect of plantations on non-forest areas, detailed guidelines/rules shall be framed by the concerned State Governments which shall come into effect after the same are concurred with modification, if any, by the MoEF&CC. The guidelines/rules were also to include provisions for penalties and mode of disposal in respect of any felling done in violation of such guidelines/rules. Till such guidelines/rules become effective, no felling from any area other than under approved working plans/schemes or felling schemes shall be permitted.

18. It is nobody's case before us that any plan or scheme in relation to felling of trees with regard to the area in question has been framed by the State Government. Furthermore, it is an admitted position even by Respondent nos. 7 and 8 that the trees have been felled/cut without permission of the competent authority. Thus, the act of Respondent nos. 7 and 8 is entirely unjustifiable and contrary to the law. It violates the mandates of the Hon'ble Supreme Court of India and even the provisions of the UP Tree Protection Act.

As a result of the above discussion, we dispose of this application with the following order and directions:

1. We hold and direct that Respondent Nos. 7 and 8 are liable to pay environmental compensation of Rs. 5 lakh for illegal and unauthorized felling/cutting of 27 trees, in violation of the laws in force.
2. The sum of Rs. 5 lakhs shall be paid to the Forest Department of the State of Uttarakhand, which shall be utilized only for the purpose of afforestation under the plan prepared by the Principal Chief Conservator of Forests of the concerned area which shall be placed before the Tribunal for its approval.
3. The said Respondent Nos. 7 and 8 shall plant atleast 270 trees of local species as may be directed by the Principal Chief Conservator of Forests in that area. The trees should be Chir trees, or such other trees which are more environment

friendly and would take greater extent of carbon dioxide and release oxygen.

4. The Principal Chief Conservator of Forests shall pass appropriate orders within two weeks from the date of passing of this judgment.
5. The plantation/afforestation in terms of this judgment shall be carried out in the area belonging to the Respondents nos. 7 and 8 itself, if the said area falls short, then in the forest area adjacent to the site in question as may be identified by Forest Department.
6. It will be the obligation of the DFO concerned to ensure and see that these plants grow properly at the cost and expense of Respondent Nos. 7 and 8.
7. We direct the concerned authorities to identify and demarcate the area which is the subject matter of this dispute as well as the adjoining forest area or the land belonging to the Government. If the boundary wall or any part thereof, falls in the forest or an area owned and possessed by the Government, the same shall be demolished.
8. The concerned competent authority will examine as to whether the plans for construction are required to be sanctioned or not. If the answer is in the affirmative, then it shall sanction or cause the plan to be sanctioned or declared thereof, in accordance with the laws in force.
9. The direction nos. 5, 7 and 8 afore-stated, shall be complied with as expeditiously as possible. In any case, not later than two months from the date of passing of this judgment.

19. M.A. No. 1141 of 2015 does not survive for consideration as we have disposed of the main application. Consequently, M.A. No. 1141 of 2015 stands dismissed.

20. The Application No. 492 of 2015 stands disposed of while leaving the parties to bear their own costs.



Swatanter Kumar
Chairperson

Jawad Rahim
Judicial Member

Raghuvendra S. Rathore
Judicial Member

Ajay A. Deshpande
Expert Member

New Delhi
7th March, 2017

NGT