

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

Original Application No. 131/2014 (T_{HC}) (CZ)

CORAM:

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

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

BETWEEN:

Ram Swaroop Yadav
S/o Shri Prabhata Ram,
Aged about 68 Years,
R/o Gram 15, Khurdiya,
Tehsil Neem-ka-Thana,
District Sikar (Rajasthan)

.....Applicant

1. State of Rajasthan
Through Principal Chief Secretary,
Forest Department,
Government of Rajasthan,
Jaipur (Rajasthan)
2. Chief Conservator of Forests,
Forest Department,
Government of Rajasthan,
Jaipur (Rajasthan)
3. Member Secretary
Rajasthan State Pollution Control Board,
Jhalana Dungri,
Jaipur (Rajasthan)
4. Collector,
District Sikar (Rajasthan)
5. Sri Balaji Stone Crusher,
Village Bhopiya,
Tehsil Neem-ka-Thana
District Sikar, Rajasthan.

6. Dhandeep Concretes,
Village Bhopiya,
Tehsil Neem-ka-Thana
District Sikar, Rajasthan.
7. Stonex Infrastructure(P) Ltd.,
Village Bhopiya, Tehsil Neem-ka-Thana
District Sikar, Rajasthan.
8. Kuber Kamna Marbles (P) Ltd.
Village Bhopiya, Tehsil Neem-ka-Thana
District Sikar, Rajasthan.
9. Sri Krishna Stone Crusher Co.
(New Name KBR Udyog India (P) Ltd.),
Village Bhopiya, Tehsil Neem-ka-Thana
District Sikar, Rajasthan.

.....**Respondents**

Counsel for Applicant : Shri Shantanoo Saxena, Advocate
Shri Dharamvir Sharma, Advocate
Counsel for Respondent Nos. 1,2 & 4 : Shri Sachin Verma, Advocate
Counsel for Respondent No. 3 : Shri Sandeep Singh, Advocate with
Shri Rohit Sharma, Advocate
Counsel for Respondent No.5 : Shri Arvind Soni, Advocate
Counsel for Respondent Nos. 6 to 9 : Shri Pramod Saxena, Advocate

Dated : February 23rd , 2015

Delivered in Open Court by

Hon'ble Mr. Justice Dalip Singh, Judicial Member

1. This Original Application was registered after being received from the Hon'ble High Court of Rajasthan where originally DB Civil Writ Petition (PIL) 1000/2013 had been filed by the Applicant Ram Swaroop Yadav Vs. State of Rajasthan & Ors. including State functionaries as well as Respondent No. 5 to 9 who are subsequent purchasers from the allottees to whom the land in question was allotted and had sold their land to Respondent No. 5 to 9 and some other persons. The Hon'ble High Court under its order dated

23.09.2013 transferred the matter to this Tribunal in the light of the judgement of the Hon'ble Supreme Court in case of *Bhopal Gas Peedith Mahila Udyog Sangathan and Others Vs. Union of India & Others (2012) 8 SCC 326*.

2. After the receipt of the record, notices were ordered to be issued to the parties. In response to the same, the Applicant and other respondents put in their appearance.
3. After the notices were issued and replies filed, it was brought to the notice of the Tribunal from the reply of the Rajasthan State Pollution Control Board that 5 stone crushing units of Respondents No. 5 to 9 have been established and were operating over the land which is disputed to be forest land at Khasra No. 627, 628 and 630 in village Bhopiya, Tehsil Neem-ka-Thana, District Sikar, Rajasthan. In the reply of the District Collector, Sikar, it was however, mentioned that four of the above five units had been closed down and were not in operation and only one unit namely Kuber Kamna Marbles Pvt. Ltd. was functional and that too under interim order passed by the Civil Court in its favour.
4. On receipt of the aforesaid information, vide order dated 12.03.2014, notices were ordered to be issued to all the above five crushing units enlisted as Respondents No. 5 to 9. The District Collector, Sikar was directed to produce before this Tribunal all relevant documents and records pertaining to the allotment of forest land to the private persons and manner in which objections filed by the Forest Department of the State Government for conversion of the 'Forest Land' to the 'Revenue Land' prior to allotment had been decided as it was alleged that the land in question had in fact been notified as 'Protected Forest' under the Rajasthan Forest Act, 1953 in the year 1964 and

subsequently the same came to be allotted to various landless persons as alleged by the Respondents No. 5 to 9 who purchased the same from the allottees after the land was de-notified from 'Forest Land' to the 'Revenue Land' prior to its allotment.

5. The State of Rajasthan in their reply however submitted that the allotment itself to various persons was bad and did not confer any right either on the allottees or the subsequent purchasers and as such establishment of the stone crushers by the Respondents No. 5 and 9 on the land in dispute was bad in the eye of law.
6. Matter was heard on several dates but we intend to decide the matter only in the light of the admitted position of fact and law and not travel into the dispute in question as to whether the land in question was, in fact, allotted to the allottees and such allotment was either valid as contended by Respondents No. 5 to 9 or dehorse the rules and bad in law without conferring any rights on the allottees or subsequent purchasers as sought to be contended before us resulting in the subsequent orders being passed by the State in this behalf with regard to land in question in village Bhopiya, Tehsil Neem-Ka-Thana, District Sikar, Rajasthan. It is not in dispute that land in question came to be recorded as forest land way back in the year 1964 in the revenue records and notified as such in terms of the provisions of Rajasthan Forest Act, 1953.
7. During the course of hearing, since the Respondents No. 5 to 9 alleged that the land had been allotted to them after it was de-notified in terms of the orders of the District Collector in 1971 to the allottees who were landless persons from whom such land was purchased by the Respondents No. 5 to 9 and their entire stakes are based upon the fact that upon being de-notified, the land ceased to be forest land and as such the provisions of the Forest

(Conservation) Act, 1980 have no applicability to the land in dispute.

Whereas the State Government in its reply has not only disputed the fact that the allotment itself was bad and could not have been made, the fact remains that the procedure for de-notification of the Protected Forest is required to be carried out in accordance with the procedure contained in Section 29 of the Rajasthan Forest Act, 1953 and more particularly in terms of Sub-Section (4) of the Section 29 of the said Act. The Section 29 Sub-Section (1) to (5) reads as follows :

*“29. **Protected Forests.**-(1) The State Government may by notification in the Official Gazette declare the provisions of this Chapter applicable to any forest land or waste land which is not included in a reserve forest, but which is the property of the State Government or over which the State Government has proprietary rights or to the whole or any part of the forest produce of which the State Government is entitled.*

(2) The forest land and waste lands comprised in any such notification shall be called a "Protected Forest."

(3) No such notification shall be made unless the nature and extent of the rights of State Government and of private persons in or over the forest land or waste land comprised therein have been inquired into and recorded at a survey or settlement or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved:

Provided that if, in the case of any forest land or waste land, the State Government thinks that such inquiry and record are necessary but that they will occupy such length of time as in the meantime to endanger the rights of the State Government, State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

(4) The State Government may, by notification in the Official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof declared as a protected forest by a notification issued under sub-sec. (1) shall cease to be a protected forest.

(5) From the date so fixed, under sub-sec. (4), such forest or portion thereof shall cease to be a protected forest, but the rights, if any; which have been extinguished therein shall not revive in consequence of such cessation.”

8. During the course of hearing, Learned Counsel appearing for Respondent No. 5 to 9 did not dispute the fact that no notification, as required under Sub Section (4) of Section 29 was published in the Official Gazette de-notifying the Protected Forest particularly Khasra No. 627, 628 and 630 of village of Village Bhopiya, Tehsil Neem Ka Thana, District Sikar, Rajasthan. The necessary inference therefore, is that without such notification and publication as required under Sub-Section (4) of Section 29, the land could not cease to be Protected Forest covered under the provisions of Rajasthan Forest act, 1953 and therefore, such land was not available for allotment in the year 1971 and if at all such allotment was made as the Learned Counsel for the State has disputed, we do not wish to go into such dispute as to whether or not the allotment took place in the year 1971 and as such we leave such question open. However, in the light of the fact that no notification has been published as required under Sub-Section (4) of Section 29 of the Rajasthan Forest Act, 1953 and has not been produced by parties, we are inclined to hold that the status of the land in dispute i.e. Khasra No. 627, 628 and 630 or for that matter any other such land covered under notification of 1964 continues to be a forest land (Protected Forest) for the purpose of Rajasthan Forest Act, 1953 till such time as procedure, as required under Sub-Section (4) of Section 29 of the Rajasthan Forest Act, 1953 is not followed.
9. In view of the above, the land in dispute continues to be a forest land and without being de-notified no non-forest activity could be permitted on such land notwithstanding the fact that any claim of Respondents No. 5 to 9 and

permissions having been granted to them for establishing stone crusher units and therefore, any such activities which may have been permitted or have been carried out by the Respondents No. 5 to 9 or any other person over the land bearing Khasra No. 627, 628 and 630 of Village Bhopiya, Tehsil Neem-Ka-Thana, District Sikar, Rajasthan are in violation of the provisions contained in the Forest (Conservation) Act, 1980. Accordingly, we would direct that such activities may be immediately be put to stop and the land be reverted back to the Forest Department and only such permissible activities as provided under the Rajasthan Forest Act, 1953 and the Forest (Conservation) Act, 1980 shall be allowed. We have been informed by way of reply submitted by the State Government on 26.04.2014 more particularly para 2 thereof that the Forest Department has already erected boundary pillars and has taken physical possession of the land in question. Be that as it may, the structures that have been erected by the Respondents No. 5 to 9 or any other persons who are willing to remove the same, shall be permitted to do so by the officials of the Forest Department as well as District Administration. The aforesaid task be completed within three months from today to enable the Forest Department to prepare the land for plantation and other forest activities which may be done prior to the monsoon season commencing in the next Month of July.

- 10. The Original Application No. 131 of 2013 accordingly stands disposed of. All the pending Misc. Applications filed by either parties also stand disposed of accordingly. No order as to costs.**

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

(Mr. P.S.Rao)
Expert Member

Bhopal:
February 23rd, 2015



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