



**CWP No. 5600 of 2012 a/w CWP No.
9797 of 2012 & COPC No. 56 of 2009**

05.09.2013

Present:

CWP No. 5600 of 2012

Mr. Ajay Sharma, Advocate, for the petitioner.

Mr. Sandeep Sharma, Assistant Solicitor General of India,
for respondent No. 1.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh
Verma & Mr. Anup Rattan, Additional Advocate Generals,
and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate
Generals, for respondents No. 2 to 4 & 6 to 8.

Mr. C.N. Singh, Advocate, for respondent No. 9.

Mr. Arvind Sharma, Advocate, for respondent No. 10.

CWP No. 9797 of 2012

Mr. Bipin C. Negi, Advocate, for the petitioners.

Mr. Sandeep Sharma, Assistant Solicitor General of India,
for respondent No. 1.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh
Verma & Mr. Anup Rattan, Additional Advocate Generals,
and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate
Generals, for respondents No. 2 to 6.

Mr. Rajnish Maniktala, Advocate, for respondent No. 8.

COPC No. 56 of 2009

None for the petitioner.

Mr. Sandeep Sharma, Assistant Solicitor General of India,
for Union of India.

Mr. Shrawan Dogra, Advocate General, with Mr. Romesh
Verma & Mr. Anup Rattan, Additional Advocate Generals,
and Mr. J.K. Verma & Ms. Parul Negi, Deputy Advocate
Generals, for respondents-State.

Heard counsel for the parties.

2. We have perused the minutes of the proceedings of the joint meeting held on 19th August, 2013, attended by all the concerned duty holders noted in our order dated 8th August, 2013. Since, in principal, agreement has been reached for regularization of 841 roads subject to certain compliances to be made by the State Government and

that process is likely to take some time, we have no hesitation in deferring the hearing of this matter for the time being till **30th December, 2013**, for reporting of further action taken by the concerned duty holders.

3. Learned Assistant Solicitor General of India submitted that the MoEF is of the opinion that in addition to 841 roads, referred to in the order dated 8th August, 2013, by this Court, it is possible that there are other roads, which are not included in the list of 841 roads. That figure may jump to around 1500. In other words, there are more than 660 roads, which have not been brought to the notice of the MoEF as of today.

4. The learned Advocate General appearing for the State submits that this apprehension will be duly examined at the highest level by the State Government and the information that would be collated during such enquiry, the Principal Secretary (PWD) to the Government of Himachal Pradesh shall submit that information to the MoEF not later than two months from today. The State Government, through learned Advocate General, undertakes to abide by all the conditions specified in the minutes of the joint meeting held on 19th August, 2013, even with regard to the unlisted roads of which information will be furnished by the State Government in due course.

5. In view of this assurance given by the State Government, we do not deem it necessary to issue any direction on that issue as of now.

6. Learned Assistant Solicitor General of India then invited

-: 3 :-

our attention to Clause (x) of the minutes and pointed out that the State Government be directed to submit the list of officers responsible for violation.

7. In our opinion, insistence of this compliance will be counter productive at this stage. In our order, dated 8th August, 2013, we have already kept the order dated 28th August, 2009, in abeyance. Necessity of furnishing list of officers of the State Government responsible for violation would arise only if the said order was to be revived and the abeyance order is recalled.

8. In the circumstances, we hope that the officials of MoEF or any other department of the Government of India shall not insist for compliance of furnishing the names, designations and complete addresses of the officers of the State Government responsible for past violations.

9. Accordingly, this matter be notified on 30th December, 2013. The arrangement directed in terms of order dated 8th August, 2013, to continue till further directions.

Copy dasti.

(A.M. Khanwilkar)
Chief Justice

(Kuldip Singh)
Judge

September 5, 2013

(rajni / vt)

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPIL No. 91 of 2017
Decided on: November 16, 2017

Court on its own motion

Petitioner

Versus

State of Himachal Pradesh and others

Respondents

Coram

Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice

Hon'ble Mr. Justice Sandeep Sharma, Judge

Whether approved for reporting? Yes

For the petitioner : Ms. Rashmi Parmar, Advocate (Amicus Curiae)

For the respondents : Mr. Shrawan Dogra, Advocate General
with Mr. Anup Rattan and Mr. Romesh Verma, Additional Advocate Generals.

Sandeep Sharma, Judge (oral):

Taking cognizance of letter addressed to the Chief Justice of this Court, wherein person namely Shri Anant Ram Negi, resident of Village Halaila, Post Office Kotkhai, District Shimla, Himachal Pradesh, highlighted a serious issue with regard to illegal felling of trees by various private persons as well as administration for construction of roads through forest land, this Court directed Registry of this Court to register the instant petition as Public Interest Litigation (CWPIL). In the letter petition, petitioner alleged that many disgruntled persons residing in Himri Panchayat, Tehsil Kotkhai, District Shimla have indulged in illegal felling of trees for the construction of roads to their respective houses. Though the letter petitioner specifically raised issue with regard to construction of road

Whether the reporters of the local papers may be allowed to see the judgment?

from Village Tharmala to Bertu via Village Gutnan but also expressed his concern with regard to unauthorized construction of roads in the State of Himachal Pradesh, through forest land in violation of the Forest Conservation Act. Petitioner has alleged that since the officials of Forest Department are hands in glove with the forest mafia, no steps are being taken to stop/check illegal felling of trees, as a result of which, forest wealth is decreasing day by day. Apart from above, petitioner also highlighted the issue with regard to raising of orchards by private persons on the forest land in and around Shimla District.

2. Apart from above, this Court also received one letter in continuation to aforesaid letter petition, wherein, it is alleged that one person namely Keshav Ram Dogra, constructed road to his orchard by felling trees standing on forest land. Though letter petitioner by way of petition referred to herein above, alleged that more than four hundred roads have been constructed through forest land in District Shimla, after felling approximately 4000 deodar trees but no material has been placed on record to substantiate the aforesaid allegation.

3. This Court, taking note of the aforesaid serious allegations contained in the letter petition, directed the learned Additional Advocate General appearing on behalf of the State to have instructions in the matter. The Principal Chief Conservator of Forests, while filing reply on behalf of the State, denied aforesaid allegations levelled in the letter petition and claimed that the roads in the State of Himachal Pradesh and in District Shimla are being constructed after obtaining approval under Forest Conservation Act, 1980. It is further

disclosed in the affidavit that roads involving upto one hectare area are also being constructed after getting due sanction under Forest Rights Act, 2006, from the Divisional Forest Officer concerned. Above named deponent, specifically denied the allegation with respect to construction of 05 kms of road by forest mafia in the recent past, rather, it has been stated in the affidavit that Divisional Forest Officer Theog has accorded approval of 32 roads comprising of area measuring 16.1091 hectares under Forest Rights Act, from January, 2016 to 30.6.2017, under his jurisdiction. While refuting the contention of the letter petitioner that forest cover in the State of Himachal Pradesh is decreasing, Principal Chief Conservator of Forests has stated in his affidavit that there is an increase of 13 sq metres of forest cover in the State of Himachal Pradesh as per Forest Survey of India report, 2015. While dealing with specific instances as quoted in the letter petition with regard to Tharhala-Bertu and Guthan-Bohal roads, falling in Himri Panchayat of Kotkhai Tehsil, it has been informed by the State that necessary directions were issued to the Range Forest Officers, Kotkhai and Theog to visit the spot and submit a fact finding report. Aforesaid officer after having visited the spot, has reported that roads mentioned herein above were constructed about five years back and their length is only 2 kms and same figure in the list of cases registered for construction of roads in violation of Forest Conservation Act at Sr. No. 245. (Annexure R-I).

4. Similarly, the Range Forest Officer, Kotkhai after having inspected the spot alongwith Block Officer, Shillaru, Forest Guard Incharge of Sharmila Beat and Forest Guard Shillaru Beat, reported

that 480 metres long road has been constructed from Tharmala to Bertu in DPF Solku of Sharmila Beat. He has further reported, that the road in question appears to have been constructed ten years ago. As per report submitted by Range Forest Officer, Kotkhai, person namely Keshav Ram manually widened the path by 2 feet making it motorable, qua which Range Forest Officer, Kotkhai chalked out damage report No. 10/17-18 dated 23.8.2017, against Shri Keshav Ram for the alleged offence committed by him and same shall be disposed of as per departmental procedure. As per reply submitted by the respondent-State, road in question has been fenced on both sides by the State and Deodar trees have been planted, as is evident from the photographs placed on record as Annexure R-IV.

5. Most importantly, perusal of annexure R-III suggests that Range Forest Officer, Kotkhai also contacted the letter petitioner namely Shri Anant Ram Negi on his cell phone, who in turn informed the concerned officer that this is a false complaint made in his name and he has nothing to do with these roads. Similarly, inquiry with regard to construction of Tharmala-Bertu road has been entrusted to Divisional Forest Officer, Theog.

6. Though, this court after having perused aforesaid reply filed by the respondent-State sees no reason to issue further directions in the matter, especially when complaint allegedly having been filed by Shri Anant Ram Negi has not been actually filed by the letter petitioner, as is stated by him to Range Forest Officer, Kotkhai, but this Court after perusing the documents placed on record by the Principal Chief Conservator of Forests, annexure R-I, sees substantial

force in the averments contained in the letter petition that roads are being constructed in the State of Himachal Pradesh in violation of Forest Conservation Act. As per own calculation of the Forest Department, approximately 2183 roads have been constructed in the State of Himachal Pradesh in violation of the Forest Conservation Act, which is a large number and can not be overlooked. It also emerges from the perusal of documents placed on record by the Forest Department that the matter with regard to construction of roads in the State of Himachal Pradesh in violation of Forest Conservation Act had come to the notice of this Court, in CWP No. 5600 of 2012 titled as **Manoj Kumar versus Union of India & others** and connected matters and COPC No. 56 of 2009 titled as **Kuldeep Singh Chauhan versus Balbir Thakur and others**, wherein, directions were issued to the State of Himachal Pradesh as well as Ministry of Environment and Forests, Government of India, for inspection of such roads by Committees and thereafter to report the matter to the Northern Regional Officer, Ministry of Environment and Forests, Chandigarh, for consideration of proposal for approval.

7. Though this Court, after having perused specific reply qua the roads allegedly constructed by private persons or authorities in violation of Forest Conservation Act, sees no reason to keep this petition alive, but, definitely, this Court can not lose sight of the fact that thousands of roads have been constructed in the State of Himachal Pradesh, in violation of Forest Conservation Act as such, this Court deems it proper to call for a detailed report from the respondent-State with regard to steps taken by the Forest Department for obtaining approval from the Ministry of Environment

and Forests, Government of India, pursuant to directions issued by this Court in CWP No. 5600 of 2012 (supra) and COPC No. 56 of 2009 (supra).

8. Before issuing necessary directions in light of the discussion made herein above, it may be noticed that the issue with regard to encroachment on forest land by private persons in District Shimla for raising orchards is already pending adjudication before this Court in CWPIL No. 9 of 2015 and CWPIL No. 17 of 2014, as such, no directions in that regard are required to be issued in the present petition.

9. Consequently, in view of discussion made herein above, present petition is disposed of with a direction to the Chief Secretary to the Government of Himachal Pradesh to file his personal affidavit, detailing therein number and names of roads constructed in the State of Himachal Pradesh, in violation of Forest Conservation Act. Chief Secretary may also indicate in his affidavit that what steps have been taken by the State for getting necessary permission from the Ministry of Environment and Forests, Government of India, for regularization of roads constructed in violation of Forest Conservation Act. Needful be done within a period of two weeks from today.

10. Aforesaid affidavit filed by the Chief Secretary to the Government of Himachal Pradesh in compliance to the instant judgment shall be placed before this Court.

(Sanjay Karol)
Acting Chief Justice

(Sandeep Sharma)
Judge

November 16, 2017 (vikrant)

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No. FFE-B-G(6)- 9/2015
Government of Himachal Pradesh
Forest Department.

From

The Principal Secretary (Forests) to the
Government of Himachal Pradesh.

To

The Pr. Chief Conservator of Forest (HoFF),
Himachal Pradesh, Talland, Shimla.

Dated Shimla-2, the 15-11-2016.

Subject: Additional violation cases (not included in the list of 2183) not reported earlier to Hon'ble High Court.

Sir,

I am directed to refer to the subject cited above and to say that cases of all such roads (not included in the list of 2183) constructed in violation of the provisions of the Forest (Conservation) Act, 1980 be accepted and processed for seeking approval under the said Act so that these can be regularised.

This is for your information and strict compliance.

Yours faithfully,

(Sat Pal Dhiman)
Joint Secretary (Forests) to the
Government of Himachal Pradesh.

Encls As above

Dated the 15-11-2016

Copy is forwarded to:-

- 1 The Dy. Secy. (PW) to the GoHP w.r.t his letter No. PBW (B) E (3) 1/2013-I dated 8-11-16 for information.
- 2 Nodal Officer-cum-CCF(FCA) is requested to circulate the same to all CCFs/CFs(Territorial & Wildlife) for compliance.

(Sat Pal Dhiman) 15-11-16
Joint Secretary (Forests) to the
Government of Himachal Pradesh

PTC

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Endst. No.Ft.48-66/2015(FCA) Dated Shimla-1, the

Copy is forwarded to:-

1. Pr. CCF (WL) HP.
2. All CCFs/CFs (T ,WL & GHNP) in HP.
3. All DFOs (T & WL) in HP

For information and further necessary action. They are requested to accept the cases (which are not included in the list of 2183) constructed in violation of the provisions of the Forest (Conservation) Act, 1980 and process for seeking approval under the said Act so that these can be regularized.

Chief Conservator of Forests (FCA)
O/O Pr. CCF(HoFF), HP, Shimla.

CC
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25/11/16
25/11/2016
CBA
28 Nov 16