



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण

(सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार)

National Highways Authority of India

(Ministry of Road Transport and Highways, Govt. of India)

NHAI PIU – Shimla, House No. 1, Rishikesh Sadan, Shanti Kutia, Chakkar Shimla-171005, H.P.

Email: pdpiushimla@nhai.org; pdpiushimla@gmail.com | Phone: 0177-2633318



11008/3/2012/Forest/S-K/PIU-SML/526

02 June, 2022

To,

The Divisional Forest Officer,
Shimla Forest Division (HP)

Sub: Proposal for diversion of forest land measuring 2.4589 ha. in village Kathali from R/D 127/450 to 128/250 for four laning of Solan-Kaithlighat section of NH-22 (Now NH-05) from Km. 106.139 to Km 129.050 in the state of Himachal Pradesh. (Proposal no.: FP/HP/ROAD/120302/2021)

Ref: (i) Minutes of REC meeting dated 18.05.2022

Sir,

It is apprised that FCA case for diversion of 2.4589 ha. of forest land in village Kathali from R/D 127/450 to R/D 128/250 for four laning of Solan-Kaithlighat section of NH-22 (Now NH-05) from Km. 106.139 to Km 129.050 in the state of Himachal Pradesh was uploaded on e-parivesh portal on 30.04.2021.

2. However, Regional Empowered Committee meeting was conducted on 13.05.2022 wherein few observations were raised. Parawise compliance of the observations is as follow:

Sr. No.	Observations raised by REC, Committee	Compliance by User Agency
1.	The DFO, SDM concerned and Project Director NHAI Shimla will visit the site for ascertaining that there is no change in the alignment proposed with the proposal no. FP/HP/ROAD/120302/2021 and this is the same alignment which was proposed and approved by the Government of India with the proposal no. FP/HP/ROAD/14132/2013 vide dt. 03.12.2015. A certificate in this regard be submitted to the IRO Shimla.	Joint site visit was conducted on 18.05.2022 in village Kathali. Copy of report is enclosed. On the basis of site visit a certificate was also issued duly signed by DFO, Shimla, SDM, Solan & Project Director, NHAI. Copy of certificate is enclosed.
2.	This is ascertained that the piece of land which is being asked for diversion now was part of the alignment approved in 2015 by the government of India and was listed as non-forest land in the proposal approved earlier. This is also assumed that the enumeration of the whole alignment has already been done in the past for the approved project. Therefore, no new enumeration should be done in this instant case. Clarity and certificate in this regard is required by the concerned DFO.	During site visit it was finalized that no change in the alignment in village Kathali has been done by PIU Shimla. Further as far as clarification regarding enumeration of trees is concerned, DFO, Shimla will reply.



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3.	<p>The KML file showing all components in forest and non-forest land in distinct colours for the complete original alignment from Parwanoo to Shoghi section (Proposal no. FP/HP/Road/4132/2013) superimposing the KML file of present proposal (Proposal no. FP/HP/Road/120302/2021) is required to be submitted.</p>	<p>It is submitted that PIU Shimla has uploaded the KML file of subject FCA case (Proposal no. FP/HP/Road/120302/2021) on e-parivesh portal.</p> <p>Further it is apprised that during proposal no. FP/HP/Road/4132/ 2013, toposheet was submitted by User Agency for Parwanoo-Shoghi section (Copy enclosed).</p> <p>However as far as processing of detailed kml file of Parwanoo-Shoghi section is concerned, it is hereby submitted that such process is time consuming and hence affecting the subject FCA case.</p> <p>However the said detailed kml file as desired by Forest Department will be submitted before stage-II approval.</p>
4.	<p>The DFO concerned and user agency will find out the possibilities to reduce the number of trees (especially oak) to be affected.</p>	<p>Undertaking enclosed.</p>
5.	<p>The User Agency will explore the possibility of translocating ecologically important saplings of tree species especially oaks being affected atleast on experimental basis.</p>	<p>Undertaking enclosed.</p>
6.	<p>The FRA certificate along with all prescribed annexures is required to be submitted before Stage-II (final) approval.</p>	<p>In this respect, an undertaking has already been submitted by User Agency stating that FRA certificate will be provided by User Agency (PIU-Shimla) before Stage-II approval.</p>
7.	<p>Since the proposed diversion area is a disputed land and the matter is sub-judice in Kandaghat Court, Solan, therefore, diversion of the disputed land is subject to the final decision of the court.</p>	<p>The said observation is not in consonance with the direction of Hon'ble High Court dated 08.12.2020.</p> <p>The said FCA case was processed by User Agency as per direction issued by Hon'ble High Court on 08.12.2020.</p> <p>Direction of Hon'ble High Court is briefly reproduced as below:</p> <p>"Para no. 3 Consequently, the Forest Department concerned shall forthwith to the petitioner, the entire records appertaining to the enumeration of trees hence existing on the afore stretch of forest land, and thereafter the petitioner authority, shall forthwith transmit them to the Regional Office, of, the Ministry of Environment, Dehradun and the latter upon receiving the afore, shall forthwith or with utmost promptitude hence proceed, to, inasmuch, as, within one month from today, and strictly, in</p>



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		<p>accordance with law, complete the makings, of, apposite sanctions.</p> <p>Para no. 4 Upon permission being received from the Regional Office, Ministry of Environment, Dehradun both for felling of trees existing upon the forest land, and also for, conversion of forest land, to non forest land, or for its use for construction of roads, thereon, thereupon, the petitioner authority shall proceed to forthwith execute the road construction activity, and shall completely, complete it within six months".</p> <p>It is further directed that para no. 4 (Page no. 7) that "the petitioner authority shall, upon, receiving the afore permission shall proceed to place on record, of the writ petition, and, shall also place before this Land Acquisition Collector, besides before the Civil Court concerned, a sworn affidavit by its responsible functionary, disclosing therein that as and when the dispute with respect to the entitlements to compensation, as, are underway inter se the litigants concerned, compensation amount determined thereunders, shall be forthwith deposited before the Land Acquisition Collector concerned".</p>
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3. In this regard, it is requested to take necessary action so that stage-I approval for diversion of forest land measuring 2.4589 hectare could be obtained at the earliest & encumbrance free land could be provided to the Contractor for starting the four laning work.

(Ram Asra Khural)

GM (Tech.)-cum-Project Director
NHAI, PIU-Shimla

JOINT INSPECTION

JOINT INSPECTION REPORT FOR DIVERSION OF FOREST LAND MEASURING 2.4589 HA. IN VILLAGE KATHALI FROM R/D 127/450 TO 128/250 FOR FOUR LANING OF SOLAN-KAITHLIGHAT SECTION OF NH-22 (NOW NH-05) FROM KM. 106.139 TO KM 129.050 IN THE STATE OF HIMACHAL PRADESH. (PROPOSAL NO.: FP/HP/ROAD/120302/2021).

DATE OF INSPECTION: 18/05/2022.

A Joint Inspection was carried out on 18.05.2022 in revenue village Kathali for the proposed diversion of forest land measuring 2.4589 ha. in village Kathali from R/D 127/450 to 128/250 for four laning of Solan-Kaithlighat section of NH-22 (Now NH-05) from Km. 106.139 to Km 129.050 in the state of Himachal Pradesh.

It is to be mentioned that Stage-II approval of FCA proposal no. FP/HP/Road/4132/2013 measuring 65.50 Ha is already accorded by MoEF&CC vide letter dated 03.12.2015 in favour of NHAI for 4 laning of Parwanoo-Shoghi section of NH-22 from km. 67.000 to km. 129.000.

During said site visit, the committee members observed/reviewed the alignment submitted by NHAI PIU Shimla in the forest proposal no. FP/HP/Road/4132/2013 (Parwanoo-Shoghi) with that of the subject FCA case of village Kathali (FP/HP/ROAD/ 120302/2021) & following points were observed:

- The team observed/certified that the acquisition of land in village Kathali from km. 127/450 to km. 128/250 is being done as per LA Plan submitted by NHAI PIU Shimla before 2013. On the basis of LA Plan, 3D no. 2741 was notified on 11.09.2013.
- The team certified that enumeration of 1155 nos of trees/saplings coming in subject FCA proposal is being done as per Layout Plan submitted by NHAI PIU Shimla. The same layout plan was submitted during Forest Proposal no. FP/HP/Road/4132/2013 (Parwanoo-Shoghi).
- It was observed that four laning of Solan-Kaithlighat section till km. 127/450 (start point of village Kathali) completed by EPC Contractor. Further it was informed by NHAI PIU Shimla that DPR of Shimla Bypass section i.e. from km. 129.050 to km 156.507 got approved by committee formed by Govt. of H.P on dated 16.06.2021 as well as by LAC committee of NHAI HQ on 23.08.2021 & the tender for Shimla Bypass is already been invited on 10.12.2021 & last date of submission of bid is 18.05.2022.
- Further the FRA certificate submitted during the proposal no. FP/HP/Road/4132/2013 (Parwanoo-Shoghi) was checked by team members & the copy of same is enclosed.

Therefore, it is certified that the proposed alignment from km. 127/450 to km. 128/250 on Solan-Kaithlighat section (**Proposal No. FP/HP/ROAD/ 120302/2021 & Area= 2.4589 ha.**) is the part of earlier approved alignment from Parwanoo-Shoghi section (**Proposal No. FP/HP/Road/4132/2013 & Area=65.50 ha.**) and there is no change in the said alignment to the original proposal.

Therefore, the above-mentioned forest proposal no. FP/HP/ROAD/120302/2021 is recommended for the construction of four laning of Solan-Kaithlighat section of NH-22 (Now NH-05) from Km. 106.139 to Km 129.050 in the state of Himachal Pradesh.


Project Director
NHAI PIU Shimla


Divisional Forest Officer,
Shimla Forest Division (HP)


SDM-cum-CA, Solan
Distt. Solan (HP)

Name of Work: Diversion of Forest Land measuring 2.4589 hectare in village Kathali for four laning of Solan to Kaithlighat section from R/D 127/450 to 128/250 in the state of Himachal Pradesh.

Proposal No. FP/HP/ROAD/120302/2021

CERTIFICATE

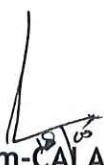
It is certified that the proposed alignment from km. 127/450 to km. 128/250 on Solan-Kaithlighat section (**Proposal No. FP/HP/ROAD/ 120302/2021 & Area= 2.4589 ha.**) is the part of earlier approved alignment from Parwanoo-Shoghi section (**Proposal No. FP/HP/Road/4132/2013 & Area=65.50 ha.**) and there is no change in the said alignment to the original proposal.



Project Director
NHAI PIU Shimla



Divisional Forest Officer,
Shimla Forest Division (HP)



SDM-cum-CALA, Solan
Distt. Solan (HP)



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Full Title of the Project: Proposal for diversion of forest land measuring 2.4589 ha. in village Kathali from R/D 127/450 to 128/250 for four laning of Solan-Kaithlighat section of NH-22 (Now NH-05) from Km. 106.139 to Km 129.050 in the state of Himachal Pradesh.

Proposal No.: FP/HP/ROAD/120302/2021

Undertaking

It is hereby submitted that during execution of four laning work in village Kathali from R/D 127/450 to R/D 128/250, DFO Shimla and User Agency (NHAI PIU Shimla) will find out the possibilities to reduce the number of trees (especially oak) to be affected.


Divisional Forest Officer
Shimla Forest Division
Divisional Forest Officer
Shimla Forest Division
SHIMLA


महाप्रबंधक (सह-प्रमुख) (तकनीकी)
GM (Technical) - CRP Project Director
NHAI, PIU-Shimla
प.का.ई. - शिमला (हि.प्र.)/PIU-Shimla (H.P.)



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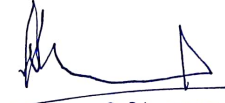



Full Title of the Project: Proposal for diversion of forest land measuring 2.4589 ha. in village Kathali from R/D 127/450 to 128/250 for four laning of Solan-Kaithlighat section of NH-22 (Now NH-05) from Km. 106.139 to Km 129.050 in the state of Himachal Pradesh.

Proposal No.: FP/HP/ROAD/120302/2021

Undertaking

It is hereby submitted that User Agency will explore the possibility of translocating ecologically important sapling of tree species especially oaks being affected atleast on experimental basis.


महाप्रबंधक (बन-पिकी) (Ram Asra Khurat) GM(T.)
जनियोजना निदेशक (Project Director)
GM (Tech.) - जनियोजना निदेशक
भारत, NHAI, PIU-Shimla
प.का.ई. - शिमला (H.P.)/PIU-Shimla (H.P.)


Counter signed by :-
Divisional Forest Officer
Shimla Forest Division
SHIMLA

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 5537 of 2020.

Decided on : 8th December, 2020.

National Highway Authority of India

...Petitioner.

Versus

State of H.P. & others

....Respondents.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner(s):

Mr. K.D. Shreedhar, Senior Advocate with Ms. Shreya Chauhan, Advocate.

For the Respondents :

Mr. Ashwani Sharma, Addl.A.G. with Vikrant Chandel, Dy. A.G.

Sureshwar Thakur, Judge (Oral).

The petitioner is engaged in the construction of four laning of road, commencing from Parwanoo to Shimla. The construction activity has reached upto a stretch located at Kathali village, whereat stands located hence forest land, nomenclatured, as, D-227 Raikot. In the afore stretch, there

¹ Whether reporters of the local papers may be allowed to see the judgment?

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are about 2079 trees of various species. Though, in contemporaneity, vis-a-vis, the notification, made under Section 4 of the Land Acquisition Act, the jamabandi(s) appertaining to the afore stretch, depicted the private landowners to be in exclusive ownership, and, possession of the afore tract of land. However, subsequently, it appears from a perusal, of, the scribed instructions, placed on record, by the learned Additional Advocate General, that the forest department has become apprised/awakened that the afore stretch of forest land, has been erroneously recorded in the name of the private landowners, despite the forest department being the true owner of the afore stretch of land. It also appears from the afore scribed instructions, as, become, placed on record, that after confabulations being held inter se the authorities concerned, it being resolved, that a declaratory suit be filed before the Civil Judge, Kandaghat, for seeking a decree, for setting aside the purported erroneous entries, occurring in the revenue record, rather displaying the private landowners concerned, to be

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owners in possession of the afore tract of land, the relevant portion of the minutes, of, the meeting, held on 5th February, 2020, stand(s) extracted hereinafter:-

"During the meeting, it was pointed out that this dispute will cause delay in executing the work of Solan Kaithlighat Four Lane Project executed by NHAI, which is a very important project for the State.

After detailed deliberations, following decisions were taken:-

(i) The NHAI shall process the case for seeking approval of the diversion of additional land comprised in disputed portion coming in the construction of Four Lane under Forest (Conservation) Act, 1980 and the Forest Department shall expedite the diversion proposal at the earliest.

(ii) The Deputy Commissioner, Solan shall convene a meeting with the NHAI authorities and shall take an undertaking from them that if the ownership title of the said land is decided by the competent Court of law in favour of the local people, in that event, NHAI

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will have to bear the compensation amount for making payment to the owners.

(iii) The Forest Department shall file a suit in the competent Civil Court for seeking correction of revenue entries in its favour."

2. Since, in pursuance to the notification issued under Section 4 of the Land Acquisition Act, the Land Acquisition Collector concerned, may not, given the dispute with respect to the entitlements of compensation, hence germinating inter se the private landowners, and, the forest department, hence proceed to determine compensation, qua the lands concerned, nor it would be judicially appropriate for this Court to make a direction, upon, the Land Acquisition Collector to make determination(s), of, the compensation amount(s), (a) as, thereupon, the effect, if any, of the judicial verdict rather contrary to the private landowners' espousal, would negate, all the effects, of, the afore determination of compensation, qua them by the Collector concerned, rendering hence the afore to be, a, nugatory recouring. Furthermore, also, at this stage, it

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would be extremely hazardous, for, this Court, to direct the petitioner authority, to suo moto assess any interim compensation, nor also any directions can be made, upon, it to deposit the afore sums of compensation in the Registry of this Court, and, nor thereafter, at this stage, without for the afore reason any decision being made, by the competent authority concerned, vis-a-vis, the entitlements of the contesting litigants, to order for its disbursement to the purported legitimate disbursees thereto. In addition, another obstacle, besetting this Court, to make an affirmative order, upon, the extant petition, inasmuch, as, the Forest Department, and, other respondents concerned, being directed, to, permit the petitioner to proceed to undertake the construction activities in the afore stretch of forest land, (b) is, comprised in the fact that though enumeration of trees in the afore land rather has occurred, (c) however, the thereafter imperative processes, for ensuring valid felling(s), of the afore existing enumerated trees, upon, forest land, besides for permission being granted, for conversion of the forest land,

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to, non forest land, inasmuch, as, for construction of the road thereon, are, to be yet initiated by the petitioner.

3. Consequently, the Forest Department concerned, shall forthwith purvey to the petitioner, the entire records appertaining to the enumeration of trees hence existing on the afore stretch of forest land, and, thereafter the petitioner authority, shall forthwith transmit them to the Regional Office, of, the Ministry of Environment, Dharadun, and, the latter upon receiving the afore, shall forthwith or with utmost promptitude hence proceed, to, inasmuch, as, within one month from today, and, strictly in accordance with law, complete the makings, of, apposite sanctions.

4. Upon permission being received from the Regional Office, Ministry of Environment, Dehardun, both for felling of trees existing upon the forest land, and, also for, conversion of the forest land, to non forest land or for its use for construction of road(s) thereon, thereupon, the petitioner authority shall proceed to forthwith execute the road construction activity, and,

...7...

shall completely, complete it within six months. However, the petitioner authority shall, upon, receiving the afore permission shall proceed to place on record, of the writ petition, and, shall also place before this Land Acquisition Collector, besides before the Civil Court concerned, a sworn affidavit by its responsible functionary, disclosing therein that as and when the dispute with respect to the entitlements to compensation, as, are underway inter se the litigants concerned, becomes fully rested, thereupon, compensation amount determined thereunders, shall be forthwith deposited before the Land Acquisition Collector concerned. It is also clarified that the Land Acquisition Collector, may not, till a decision becomes meted, upon, the civil suit concerned, proceed to determine compensation, in pursuance, to, the notification issued under Section 4 of the Act. With the afore directions the extant writ petition stands disposed of. Further, the learned Civil Judge (Junior Division), Kandaghat, is, directed to within nine months from today,

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conclude the trial of the Civil Suit concerned. All pending applications also stand disposed of.

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge.

8th December, 2020.
(jai)