

BEFORE THE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH AT NEW DELHI****I.A. NO.136 OF 2024****IN****ORIGINAL APPLICATION NO.59 OF 2024****IN THE MATTER OF:**

News item titled “Deforestation for mining resumes in Hasdeo locals activists allege detention” appearing in The Hindu dated 22.12.2023.

AND IN THE MATTER OF:

Hasdeo Arand Bachao Sangharsh Samiti

... Intervenor

AFFIDAVIT IN REPLY ON BEHALF OF THE RESPONDENT NO. 4 –**RAJASTHAN RAJYA VIDYUT UTPADAN NIGAM LTD. (RRVUNL)****INDEX**

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Date: 24.08.2024

BEFORE THE NATIONAL GREEN TRIBUNAL
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AFFIDAVIT IN REPLY ON BEHALF OF THE RESPONDENT NO. 4 –
RAJASTHAN RAJYA VIDYUT UTPADAN NIGAM LTD. (RRVUNL)

I, Hem Raj, S/o Shri Nanag Ram, aged about 55 years, working as the Superintendent Engineer with Respondent No. 4, R/o 24, Chhaya Deep II Colony, Mahesh Nagar, Jaipur do hereby solemnly say and affirm as follows:

1. That I am the authorized representative of the Answering Respondent No. 4 (**‘RRVUNL’**) and well versed with the facts and circumstances of the case and as such competent to swear the present affidavit.

2. That I have read the contents of the captioned Intervention Application filed by Hasdeo Arand Bachao Sangharsh Samiti (**“Applicant”**) in the captioned *suo moto* proceedings initiated by this Hon’ble Tribunal titled as “News item titled "Deforestation for

mining resumes in Hasdeo locals activists allege detention" appearing in The Hindu dated 22.12.2023 in Original Application No. 59 of 2024.

3. At the outset the Answering Respondent No.4 denies each and every statement/averment in the form of allegations made in the instant Appeal to the extent the same is inconsistent with the case set out by the Answering Respondent No.4. Nothing herein shall be construed as an admission of any of the statements made in the Appeal unless any statement is specifically admitted. No statement shall be deemed to be admitted for want of a specific traverse.
4. I say that I have also read the contents of the Intervention Application filed by the Hasdeo Arand Bachao Sangharsh Samiti i.e. the Applicant herein. I say that the said application is bereft of any merits and deserves to be dismissed at the threshold for the reasons detailed out herein below in the present Reply.
5. At the outset the Answering Respondent No. 4 submits that by way of a separate reply the Answering Respondent No.4 has already dealt in detail with the main issue arising in the present *suo-moto* proceedings, which may be read as part and parcel of the present reply to the intervention application filed by the Applicant. The Answering Respondent No. 4 craves leave of this Hon'ble Tribunal to also rely upon the detailed submissions made in its main reply to the present *suo-moto* proceedings.

6. The Answering Respondent No.4 submits that the present Application filed by the Applicant deserves to be dismissed by this Hon'ble Tribunal for the following reasons:

- a. The Applicant seeks to expand the scope of the present proceedings.
- b. Applicant is guilty of forum shopping wherein no relief has been granted to the Applicant till date by any forum.
- c. The issue pertaining to the tree felling activity involved in the present proceedings has been pursuant to the recommendations of the expert body report under the orders of this Hon'ble Tribunal.
- d. Environmental Expert bodies have applied their due application of mind.

A. APPLICANT SEEKS TO EXPAND THE SCOPE OF PRESENT PROCEEDINGS:

7. The Answering Respondent submits that there are 3 adjacent coal blocks in the Hasdeo Arand Coal Fields Area (**HAC Area**), Chhattisgarh i.e. Parsa Coal Block (**'PCB'**), Parsa East & Kanta Basan (**"PEKB"**) and Kente Extension Coal Block (**'KECB'**) which have been allocated to the Answering Respondent by the Ministry of Coal, Government of India between the year 2007-2016.

8. The issue in the present *suo-moto proceedings* only relates to the tree felling activity being carried out in the subject PEKB Mine falling in the HAC Area, Surguja district, Chhattisgarh, which is

evident from the order dated 22.01.2024 passed by this Hon'ble Tribunal which reads as under:

*“1. This Original Application has been registered in suo-moto exercise of powers on the basis of the news item titled "Deforestation for mining resumes in Hasdeo, locals, activists allege detention" appearing in The Hindu dated 22.12.2023. The news item alleges deforestation for mining activities in Hasdeo forest in Chhattisgarh and consequential protest in Sarguja District. **It is alleged that the Forest Department has cut down trees to clear land for mining in Parsa East Kete Basan (PEKB) Phase-II.**”*

A True copy of the order dated 22.01.2024 passed by this Hon'ble Tribunal in O.A. No. 54 of 2024 is already on record but for the sake of convenience the said order is annexed herewith and marked as **ANNEXURE R-1**

9. It is submitted that in view of the abovementioned order of this Hon'ble Tribunal, the Applicant ought not be allowed to enlarge the scope of the present proceedings by bringing other adjacent coal blocks i.e. Parsa Coal Block (**PCB**) and Kente Extension Coal Block under challenge and that the Intervention Application must be dismissed on this ground alone. A bare perusal of the Intervention Application filed by the Applicant goes to show that the Applicant has not restricted its challenge to the mining activities in the PEKB coal block but has made general allegations

against mining in all the coal blocks in the HAC area, which cannot be allowed.

B. Applicant is guilty of forum shopping wherein no relief has been granted to the Applicant till date by any forum:

10. It is submitted that admittedly the Applicant herein including its authorized signatory, Mr. Jainandan Porte who seeks intervention in the present *suo moto* proceedings, have already approached the Hon'ble High Court of Chhattisgarh by way of a writ petition seeking redressal of their grievances with respect to the various community rights, as has also been detailed out in the present intervention application. The Writ Petition, being WPC No. 1346 of 2016, has been filed under Article-226 of the Constitution of India seeking the restoration of the alleged community rights of the Petitioners therein, which was revoked by the Collector and Chair of the District Level Forest Rights Committee, Surguja District, Chhattisgarh vide order dated 03.09.2013 under Forest Rights Act, 2006 in respect of forest area falling under village Ghatbarra in the PEKB Mine. A True copy of the Writ Petition No. 1346 of 2016 filed before the Hon'ble High Court of Chhattisgarh is annexed herewith and marked as **ANNEXURE R-2**
11. That the Applicant herein/ Writ Petitioners before the Hon'ble High Court of Chhattisgarh, filed an application being I.A. No. 5 of 2022 before the Hon'ble High Court of Chhattisgarh on 28.09.2022 seeking stay on the felling of trees and any further deforestation of forests of village Ghatbarra *viz* Forest Compartments No. P-2002, P-2003 and P-2004 which falls in the subject PEKB Mine.

12. The Hon'ble High Court of Chhattisgarh vide order dated 30.09.2022 was however pleased to decline to grant stay on tree felling for the reasons that the Hon'ble Supreme Court of India was ceased off the issue raised in the I.A. for Stay. A perusal of the said order goes to show that the Hon'ble High Court of Chhattisgarh has specifically rendered a finding that the Phase-II PEKB Mining permission order dated 02.02.2022 passed by the MoEF and further order dated 25.03.2022 by the State Government granting Phase-II mining permission to RRVUNL and order dated 05.05.2022 passed by the Principal Chief Conservator of Forests, Chhattisgarh granting permission for tree felling in the PEKB Coal block were in light of the orders passed by MoEF & CC and the Chhattisgarh State Government in favour of RRVUNL, which orders were not under challenge before the Hon'ble High Court. A True copy of the interim order dt. 30.09.2022 passed by the Hon'ble High Court in I.A. No. 5 of 2022 in Writ Petition (Civil) No. 1346 of 2016 is annexed as **ANNEXURE R-3**.
13. It is submitted that the Applicant herein assailed the Hon'ble Chhattisgarh High Court interim order dated 30.09.2022 before the Hon'ble Supreme Court of India by way of Special Leave Petition being Special Leave Petition being SLP (Civil) No. 18103 of 2022 in the matter of "*Hasdeo Arand Bachao Sangharsh Samiti Vs. Union of India & Ors.*" Pertinently, no interim relief was granted by the Hon'ble Apex court in the said proceedings.
14. During the pendency of the said Special Leave Petition and without any interim relief granted by the Hon'ble Supreme Court of India involving the same subject matter of the present

proceedings, the Petitioners therein filed an application before the Hon'ble High Court of Chhattisgarh on 06.10.2023 seeking amendment of the Writ Petition. Vide the said application, the Petitioners therein sought to challenge the said subsequent clearances dated 02.02.2022, 25.03.2022 and 05.05.2022 issued by the MoEF in respect of the PEKB Coal block thereby enlarging the scope of relief as sought in the original Writ Petition before the Hon'ble High Court of Chhattisgarh.

15. The Hon'ble Supreme Court vide order dated 16.10.2023 has been pleased to dispose of the said SLP (Civil) No. 18103 of 2022. The relevant extract of the final Supreme Court order dt. 16.10.2023 is as under:

2. Since the order of the NGT, the Ministry of Environment, Forest and Climate Change² has granted approval for commencing Phase II mining operation for the Parsa East and Kete Basan (PEKB) Coal Block on 2 February 2022. Thereafter, the State of Chhattisgarh has on 25 March 2022 accorded permission for coal mining and for non-forest activity in respect of the Parsa East and Kete Basan Coal Block comprising 1136 hectares.

3. The above facts are not in dispute.

4. Since the order of the NGT has resulted in the above orders of MoEF&CC dated 2 February 2022 and of the State of Chhattisgarh dated 25 March 2022, Mr A N S Nadkarni, senior counsel appearing on behalf of the appellant states that the appeal is not pressed.

5 The appeal is accordingly disposed of.

6 Pending applications, if any, stand disposed of.

Special Leave Petition (Civil) No 18103 of 2022

- 1. The Special Leave Petition arose from an order dated 30 September 2022 of a learned Single Judge in IA No 5 of 2022 in Writ Petition (Civil) No 1346 of 2016. The learned Single Judge declined to entertain the prayer for interim relief primarily on the ground that proceedings were pending before this Court in which certain reliefs were claimed in respect the orders dated 2 February 2022, 25 March 2022 and 5 May 2022. The learned Single Judge had also indicated that there was no challenge to the orders at that stage.*
- 2. Mr C U Singh, senior counsel appearing on behalf of the petitioner states that an application for amending the writ petition has been filed before the High Court which is pending.*
- 3. By a separate order passed today, Civil Appeal No 4395 of 20143 instituted before this Court has been disposed of as not pressed.*
- 4. Since the writ petition under Article 226 of the Constitution is pending before the High Court, it would be appropriate and proper to relegate the petitioners to pursue their rights*

*and remedies in accordance with law. **Since the application for interim relief in IA No 5 of 2022 was not considered by the High Court for the reasons which have been indicated above, we clarify that it will be open to the petitioners to move an application for seeking interim relief. The above liberty is subject to such objections which the contesting respondents may have to the grant of interim relief. This Court has not expressed any opinion on the merits of the challenge before the High Court.***

5. *The Special Leave Petition is accordingly disposed of.*

6. *Pending applications, if any, stand disposed of.”*

A True copy of the final order dated 16.10.2023 passed by the Hon’ble Supreme Court of India in SLP (Civil) No.18103 of 2022 is annexed herewith and marked as **ANNEXURE R-4**.

16. After the disposal of the said 2 petitions by the Hon’ble Apex Court, on 19.10.2023 the Applicants herein (being Petitioner No. 2 and 3 to the High Court Writ Petition), filed another application being IA No. 13 of 2023 before the Hon’ble High Court of Chhattisgarh in the pending Writ Petition (Civil) No. 1346 of 2016 seeking stay on tree felling till the disposal of the said writ petition. The relevant prayer made by the Applicant herein before the Hon’ble High Court of Chhattisgarh is as under:

1) *“Stay the operation of orders of:*

- a) *The MoEF & CC dated 02.02.2022 approving commencement of mining in Phase II of PEKB mines,*
- b) *The State Government dated 25.03.2022 diverting 1136 ha of forest land for Phase II mining, and*
- c) *the APCCF permitting felling of trees in 43.63 ha of forest land dated 05.05.2022*
- till the disposal of the instant Writ Petition,*
- 2) *Direct the Respondent Authorities to ensure that there is no further destruction of the forest areas claimed by the Petitioner no. 1 in the Claim for Community Forest Rights filed on 12.06.2023 (Annexure P-26) till the disposal of the instant Writ Petition...*”
17. It is submitted that the Hon’ble High Court, vide order dated 02.05.2024, has been pleased to dismiss IA No. 13 of 2023 filed by the Petitioners therein. However, the Hon’ble High Court vide the same order has been pleased to allow the Applicant’s prayer seeking amendment of the main Writ Petition, wherein it had sought to challenge the order dt. 02.02.2022 passed by the Ministry of Environment Forest & Climate Change (**“MoEF”**) granting Phase-II mining permission in PEKB Mine to the Answering Respondent and consequential forest diversion orders dt. 25.03.2022 in balance 1198 ha of Phase-II PEKB mine, passed by the Chhattisgarh Government which resulted in the tree felling activity. The said writ petition is still pending adjudication. A True copy of the order dt. 02.05.2024 passed by the Hon’ble High Court of Chhattisgarh in Writ Petition (Civil) No. 1346 of 2016 is annexed herewith and marked as **ANNEXURE R-5.**

18. Accordingly, at the cost of repetition, it is most humbly submitted that issues intended to be raised in the present application are already *sub-judice* before the Hon'ble High Court of Chhattisgarh, which issues have been raised before the said High Court by the Applicant herein pertaining to tree felling activity in the PEKB mine falling in the HAC Area.

19. It is further relevant to mention here that the Applicant herein had also approached the Ld. NGT, Bhopal Bench vide an appeal being Appeal No. 16 of 2022 entitled '*Hashdeo Arand Bachao Sangarsh Samiti Appellant(s) Vs MoEF&CC & Ors.*', thereby challenging the Stage-2 Forest Clearance (**FC**) dated 21.10.2021 granted to the Parsa Coal Block (**PCB**) by MoEF under Section 2 of the Forest (Conservation) Act, 1980 and the consequential letters dated 06.04.2022 & 26.04.2022 respectively, issued by the Department of Forest & Environment, Government of Chhattisgarh & The Principal Chief Conservator of Forest Cum Nodal Officer, Government of Chhattisgarh, whereby approval of the Central Government has been conveyed to the Answering Respondent. Vide the said order dated 18.08.2022 the Ld. NGT, Bhopal Bench was pleased to dispose of the said appeal as not maintainable in light of the pendency of the Appeals on the same issue before the Principal Bench of this Tribunal and before the Hon'ble Supreme Court of India. A True copy of the order dated 18.08.2022 passed by this Hon'ble Tribunal is annexed herewith as **ANNEXURE R-6**.

20. The Applicant herein proceeded to file a statutory Civil Appeal being Civil Appeal No. 8720 of 2022 in the matter of "*Hasdeo Arand Bachao Sangarsh Samiti Vs. Union of India & Ors.*" before the Hon'ble Supreme Court of India impugning the said final order

and judgment dated 18.08.2022 passed by the Bhopal Bench of this Hon'ble Tribunal. Vide order dated 05.12.2022 the Hon'ble Apex Court has been pleased to issue notice in the said appeal. Pertinently, no stay has been granted by the Hon'ble Apex Court on any activity or clearances. A True copy of the order dated 05.12.2022 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 8720 of 2022 in the matter of "*Hasdeo Arand Bachao Sangarsh Samiti Vs. Union of India & Ors.*" is annexed herewith and marked as **ANNEXURE R-7**

21. It is therefore clear that at the instance of the Applicant itself, various forums including the Hon'ble High Court of Chhattisgarh and Hon'ble Supreme Court of India are already ceased off the subject matter arising in the present proceedings (wherein no relief w.r.t tree felling activity has been granted to the Applicant herein). Hence, no audience or indulgence should be given to the present Applicant herein who is clearly guilty of forum shopping and gross abuse of process of law.

22. It is further submitted that when the Applicant has already raised the issue forming part of the present *suo moto proceedings*, merely because it has not succeeded in its prayers, does not entitle it to participate in the present *suo moto proceedings*. The present Intervention Application of the Applicant is clearly malafide and in no sphere seeks to assist this Hon'ble Tribunal. In any case, as per the settled principles of law, the Applicant is not entitled to any relief by way of an intervention application. Therefore, the present Intervention Application filed by the Applicant must be dismissed by this Hon'ble Tribunal.

C. The issue pertaining to the tree felling activity in the present proceedings has been pursuant to the recommendations of the expert body report under the orders of this Hon'ble Tribunal:

23. The Ministry of Coal, Government of India (“MOC”) had allocated the PEKB Coal Blocks in the Sarguja district, Chhattisgarh to RRVUNL, the Appellant herein. In order to develop the coal block, the Appellant had submitted a proposal for diversion of forest land (1898.328 ha) for PEKB project on 12.01.2009 as per Forest (Conservation) Act, 1980. The MoEF had granted Stage-1 diversion proposal for PEKB coal Block on 06.07.2011, subject to certain terms and conditions. On 15.03.2012, MoEF granted Stage-II Forest Clearance and consequently on 28.03.2012 Forest Clearance was granted by the State of Chhattisgarh, while exercising power under Section-2 of the Forest (Conservation) Act, 1980.

24. The Forest Clearance dated 28.03.2012 issued by the State of Chhattisgarh (Forest Department) and approval by Central Government under Section 2 of Forest (Conservation) Act, 1980 was challenged by one Sudiep Shrivastava before this Hon'ble Tribunal, Principal Bench, New Delhi vide Appeal No. 73 of 2012.

25. This Hon'ble Tribunal, vide impugned order dated 24.03.2014, had set aside the Forest Clearance order dated 28.03.2012 and passed the following directions:

“1. Order dated 23rd June, 2011 passed by the respondent no. 2- MoEF Government of India and consequential order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the Forest

(Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;

2. *The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the proposal discussed herein above with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna. (iii) Whether the migratory route/ corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/ protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/ management strategies. (v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora? (vi) What is their opinion about the Wildlife Management plan finally prescribed. (vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.*

3. ***The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.***

4. *All work commenced by the respondent no. 3 project proponent and respondent no. 4 pursuant to the order dated 28th March, 2012 passed by the respondent no. 1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law.*

5. *No order as to costs.”*

26. That the Answering Respondent assailed the abovementioned judgment of this Hon’ble Tribunal before the Hon’ble Supreme Court of India by way of Statutory Civil Appeal being Civil Appeal No. 4395 of 2014 in the matter of “*Rajasthan Rajya Vidyut Utpadan Nigam Ltd. Vs. Sudiep Shrivastava & Ors.*”.

27. The Hon’ble Supreme Court, vide order dated 28.04.2014, while issuing issue notice in the said appeal was also pleased to grant stay in respect of Direction No. 4 passed by the Hon’ble NGT in its Judgment dated 24.03.2014. The Hon’ble Supreme Court directed as under:

“Issue notice....

...In the meanwhile, we stay the direction in the impugned order that all works commenced by the appellant pursuant to the order dated 28th March 2012 passed by the State of Chhattisgarh under Section 2 of the Forest Conservation Act, 1980 shall

stand suspended till further orders are passed by the Ministry of Environment and Forest”.

A True copy of the order dated 28.04.2014 passed by the Hon’ble Supreme Court in Civil Appeal No. 4395 of 2014 is annexed herewith and marked as **ANNEXURE R-8**

28. A bare reading of the order dated 28.04.2014 passed by the Hon’ble Supreme Court, makes it clear that tree felling and mining activity pertaining to phase-I mining in the PEKB Coal Block was never stayed by the Hon’ble Supreme Court and thus, mining continued in the PEKB mine under the directions of the Hon’ble Supreme Court of India.

29. It is submitted that by way of present Intervention Application, the Applicant effectively seeks to challenge the actions taken by the Respondent No. 2 MoEF in compliance of this Hon’ble Tribunal judgment and directions dt. 24.03.2014– i.e. Direction no. 3 which cannot be done in directly since the Applicant has failed to file any statutory appeal before this Hon’ble Tribunal.

Biodiversity Assessment Report-2021:

30. In compliance with the directions passed by this Hon’ble Tribunal vide order dt. 24.03.2014 passed in Appeal No. 73 of 2012, the State of Chhattisgarh assigned the task of carrying out a Biodiversity study in the entire HAC Area comprising of Tara, PCB, PEKB and Kente Extension coal blocks in Chhattisgarh to the expert body in the field i.e. Indian Council for Forest Research (“**ICFRE**”) in assistance with Wildlife Institute of India (“**WII**”).

31. The BAR Report shows that the study period for the field survey and for preparing the BAR Report was 18 months that included 12 months for three season comprehensive data collection and six months for report writing. Thus, in addition to conducting the studies on the various aspects of the HAC and the impacts of mining therein, the ICFRE also took note of all the queries raised by the Ld. NGT as per its order dt. 24.03.2014, and after a thorough detailed investigation and study gave answers to the same. Further, Consultative meetings with State Forest Department (**SFD**) and project proponents were also conducted to collect relevant detailed information related to the extent of forests falling within each compartment, ranges, divisions, etc., within the HAC, area shape files, location maps, assistance to conduct the field survey and project intervention information. Comprehensive field surveys were conducted by the ICFRE for collection of information/ baseline data under respective components such as terrestrial flora and fauna including avifauna and wildlife, aquatic diversity, socio-economic status, mining and mine management, efficacy of mining plan/ progressive mine closure plan, translocated trees and all the conservation measures including surface water/ afforestation employing standard methodologies.

32. A study of the BAR Report shows that the 4 (four) coal blocks including PEKB Coal Block, in which mining has been recommended by ICFRE, are at the fringe of the Forest area and have lesser tree density and tree diversity as compared to other coal blocks of the HAC. Further, it has been categorically been observed that the stand density of trees and shrubs in the core

zone of the four contiguous coal blocks i.e. Tara (15), Parsa (13), PEKB (14) and KECEB (12) – out of the total 23 coal blocks in HAC is low when compared with the density of the trees and shrubs in the remaining 19 coal blocks in HAC, i.e. less plant diversity in both core and buffer area in the said 4 coal blocks.

33. It is only after a comprehensive biodiversity study of entire HAC Area, ICFRE permitted mining only in the said 4 coal blocks out of the total 23 coal blocks in the said area and that too with strict environmental safe guards including appropriate conservation measures for management of surface water and biodiversity. These four-coal blocks put together covers an area of 68.75 sq.km which is only **4.31%** of the entire HAC Area of about 1876.6 sq. kms. Pursuant to the said study, the ICFRE has categorically observed that mining in only 4 coal blocks out of the total 23 coal blocks in the HAC be allowed so as to conserve the relatively dense moist-dry deciduous forests in the other coal blocks. It can thus be seen that conservation of the forests, its flora and fauna were the top priority of the ICFRE. After considering all relevant considerations including the report submitted by WII, the ICFRE had recommended that:

*“The allotted four contiguous coal blocks falling within the Gej-Jhink watershed viz., Tara (15), Parsa (13) PEKB (14) & Kente Extension (12) that are either already opened or in advance stage of getting the statutory clearances/ToR approved, **can be considered** for mining with strict environmental safeguards including appropriate conservation*

measures for management of surface water and biodiversity.”

34. The ICFRE Report further records that mining in the subject PEKB coal block has been undertaken in a systematic reclamation and rehabilitation activities including, stabilization of external waste dumps and internal backfilling's with adequate engineering measures (Toe/retaining Wall, Garland drain, gully plugs, miscellaneous drainages alongside haul road/avenue areas, water harvesting structures like settling ponds, catch water drains along coal block boundary to maintain required flow in the natural water courses, check dams, etc.) and biological measures include extensive afforestation with suitable mixed native plant species all over the reclaimed areas that include both within the statutory areas and vacant lands have also been undertaken. Thus, the BAR records that due and proper care is being taken to preserve the environment while mining in the coal blocks in the HAC.

35. At the cost of repetition, it is submitted that ICFRE Report does not bar the mining of coal from the said 4 coal fields, instead suggests employment of mitigation measures to be carried out while mining in the said 4 coal blocks including Parsa coal block. It is clear that after due application of mind and detailed assessment by ICFRE/WII, mining has been permitted to be carried out in the 4 contiguous coal blocks of Hasdeo - Arand area, namely Tara, Parsa, PEKB and KECB with certain conditions and additional mitigation measures which needs to be carried out by the Answering Respondent No.3 herein.

Response on the Wildlife Institute of India (WII) issue:

36. It is submitted that the faunal aspect of studying HAC was carried out by the WII. The data was collected and studied by team of experts from WII, who prepared a report on the said aspect. The study of the WII Report goes to show various impacts of mining on the environment have been detailed by WII in its Report, however, WII has subsequently also given various recommendations and suggestions to mitigate the said impacts. The said mitigation measures have been suggested based on the assessment of the impacts of the operational coal mine on faunal biota in PEKB coal block under various heads.

37. The WII has reported the occurrence of large mammals especially elephant in some of the prime biodiversity rich locations. It is evident that this area supports rich biodiversity with a multitude of mammalian species including tigers and harbours forest-dependent communities and therefore sustaining the forest cover to maintain its overall ecological integrity are essential pre-requisite for the overall wellbeing of the area. Accordingly, WII suggested as follows:

“It is pertinent that the Chhattisgarh State Forest Department may identify the areas for declaration as Conservation Reserves with due consultation and involvement of local communities and all other relevant stakeholders. Under the ambit of a conservation reserve, habitat improvement activities such as restoration of grasslands and degraded forests; improving surface water availability for wildlife in relatively drier tracts during summer, regulating forest fires, and improving overall protection can benefit wildlife.”

38. The ICFRE while agreeing and accepting the said suggestions by the WII observed that considering the rich forest cover, floral biodiversity (640 plants species), occurrence of 33 Rare, Endangered and Threatened (RET) plant species and the different watersheds contributing the hydrological regime/hydrological flow; habitat for the fauna particularly mammals with large home ranges that is known to have established connectivity with proposed '*Lemru Elephant Reserve*' and livelihood dependence on non-wood forest products by the traditional forest dwelling community, the **ICFRE suggests Biodiversity Conservation Area** comprising of 337 forest compartments (938 sq.km) in Chornai watershed; and 140 forest compartments (330.51 sq.km) in Ton-Teti watershed, where 14 proposed coal blocks are located, for a sustainable development and conservation.

39. While suggesting the development of the Biodiversity Conservation Area to preserve the flora and fauna in the forest area, the ICFRE has balanced the same with the socio-economic requirement and the industrial development requirement of the area under consideration for mining and gave the following recommendations: -

- i. The allotted four contiguous coal blocks falling within the Gej-Jhink watershed viz., Tara (15), Parsa (13) PEKB (14) & Kente Extension (12) that are either already opened or in advance stage of getting the statutory clearances/ToR approved, **can be considered** for mining with strict environmental safeguards including appropriate conservation

measures for management of surface water and biodiversity.

- ii. The total extent of 4 coal blocks of Tara, Parsa, PEKB, Kente Extension put together comprises of 80.95 sq.km, having a mineable reserve of 1143.49 MT (geological resources of 1475.81 MT) to meet the coal requirement from HAC.
- iii. The total forest area of the Hasdeo Arand Coalfields is 1876sq. km out of which the forest area to be diverted for the mining activity is only in 4 out of 23 coal blocks covering **only 4.31 %** of the entire HAC.
- iv. However, mining in Kente Extension (12) **may be decided appropriately** with strict environmental safeguards pertaining to surface water management and biodiversity conservation measures, considering the presence of relatively more very dense, moderately dense forest cover and wildlife occurrence, particularly, elephant movements.
- v. In addition, the MoEF & CC vide letter No. J-11015/48/2019.II(M) dated 8.01.2020 issued ToR for conducting EIA/EMP studies as this coal block is allotted through auction process to M/s. Rajasthan Rajya Vidyut Utpadan Nigam Limited (RVUNL) and as per the condition No. 4(i) of the ToR, MoEF & CC has mandated to conduct Carrying Capacity study.

- vi. A total of 337 forest compartments covering an area of 938 sq.km in Chornai watershed and 140 forest compartments covering an area of 330.51 sq.km in Ton-Teti watershed are suggested for **Biodiversity Conservation Area (BCA)** (Annexure 10.1; Individual Forest compartment wise details falling within the Biodiversity Conservation Area of Hasdeo - Arand Coalfield, Chhattisgarh are provided in Chapter-10 of main report Volume-I).

* However, a part of BCA comprising of two forest compartments No. P2114 and P1998 that are falling within PEKB operational mine and allotted Parsa coal block are suggested to be exempted from BCA.

- vii. There are two contagious coal blocks such as Sarma (20) and Laxmangarh (21) covering a total extent area of 41.82 sq.km with 10.53 sq.km under moderately dense forest (0.91% out of 1158.04 sq.km) and a relatively smaller area of 0.04 sq.km under very dense forest (0.04% out of 1158.04sq.km) falling within the Gaj-Jhink watershed (upstream of Atem Nadi).
- viii. Both Sarma (20) and Laxmangarh (21) coal blocks were observed to have high level of anthropogenic pressures and degraded forest due to extensive agriculture and allied activities and its close affinity/proximity to Udaipur – the tehsil headquarters, under Surguja district.

- ix. Also, the other two contiguous coal blocks i.e., Bhakurma-Martinga (22) and Kedma (23) covering an extent of 44.95 sq.km with 27.15 sq.km area under moderately dense forest (2.34% out of 1158.04 sq.km) and 5.83 sq.km area under very dense forest (5.83% out of 1158.04 sq.km) falling within Rehar watershed (at upstream).
- x. These four coal blocks viz., **Sarma (20), Laxmangarh (21) falling in** Gej-Jhink watersheds; **Bhakurma-Martinga (22) and Kedma (23)** falling in Rehar watershed, as per the information received from CMPDI are only regionally promotionally explored and the boundary demarcation is yet to be carried out.
- xi. Hence mining in the identified four coal blocks viz., **Sarma (20), Laxmangarh (21), Bhakurma-Martinga (22) and Kedma (23)** may be kept in abeyance till complete exploration and boundary demarcation is finalized; and the detailed assessment of the catchment and drainage networks of the Rehar River as well as the prominent agriculture activity are made to understand the impact.
- xii. Overall, 14 projects, falling within both the Chornai (8) and Ton-Teti (9) watershed **may be not recommended** for mining keeping in view of conserving the relatively dense moist-dry deciduous sal dominated forest tracts that provide home range for elephant ; these forest are

also intersected by dense stream channels of the higher order characteristic to the Chornai watersheds and considerable area under the coal blocks with relatively dense forests being influenced by the Hasdeo River/ Hasdeo-Bango Dam characteristic to the Ton-Teti watershed.

Based on the compliance condition stipulated in the Environmental Clearance (vide letter No.J-11015/03/2008-1A.II(M) dated, 21.12.2011) a 75 km dedicated Railway corridor of South East Central Railway (SECR) connecting Surajpur Railway Station on Bilaspur - Ambikapur to pit head of PEKB mine has been commissioned in April 2018. The same may be utilized by the adjacent coal blocks in the cluster. The coal transportation through the dedicated railway corridor from these coal blocks will likely reduce the impacts of mining and transportation on the environment and human health.

40. In addition to the above, it has also been recommended that a cumulative impact assessment of all the coal blocks on environment or a carrying capacity study involving physical, biological, social environment with respect to the developmental intervention of the entire HAC shall be carried out for decision making and to achieve sustainable development.

41. The suggestions made by the WII have not only been duly taken into consideration by the ICFRE in the BAR Report, but the same have also been sought to be implemented by setting the

Biodiversity Conservation Area and for the same the ICFRE has earmarked the area comprising of 337 forest compartments (938 sq.km) in Chornai watershed; and 140 forest compartments (330.51 sq.km) in Ton-Teti watershed, where 14 proposed coal blocks are located, for a sustainable development and conservation. To ensure strict compliance and implementation of the said suggestion, the ICFRE has ensured that the 14 projects within the Chorani and Ton-Teri watershed are not even recommended for mining.

42. It is also relevant to mention here that the WII in its report has further suggested that the conservation/management strategies as described in Chapters- 7, 8 and 9 of the WII Report, addressing the impacts of mining in the said coal block and the measures to overcome the same be stringently complied with and strict monitoring be carried out by the Chhattisgarh State Forest Department. It is pertinent to note here that WII nowhere has observed that the remaining area in the HAC is a 'No-go area'. On the contrary, the WII has only made a suggestion that the balance area be declared as 'No-go area. The same is evident from the response given by the WII to one of the queries raised by NGT in respect of the PEKB coal block, which reads as follows:

“(vii) What conditions and restriction do they propose on the mining in question, if they favour such mining?”

*As certain portions of the PEKB block has already been opened for mining, the mining operation may only be permitted in the already operational mine of the block. **The other areas in HACF and***

landscape surrounding it should be declared as “no-go areas” and no mining should be carried out considering the irreplaceable, rich biodiversity and socio-cultural values.

43. The Forest Advisory Committee (FAC), in its meeting held on 23.12.2021, accepted the BAR Report-2021 prepared by ICFRE and accordingly recommended mining in Phase-II of PEKB Mine allotted to the answering Respondent.
44. It is pertinent to point out here that the Applicant herein has not challenged the Phase-II PEKB Mining permission order dated 02.02.2022 passed by the MoEF and further consequential order dated 25.03.2022 passed by the Chhattisgarh Government, granting Phase-II mining permission to Answering Respondent and tree felling order dated 05.05.2022 passed by the Additional Principal Chief Conservator of Forests, Chhattisgarh, granting permission for tree felling in the PEKB Coal block under Section-16 of the National Green Tribunal Act, 2010. Therefore, the intervention application of the Applicant must be dismissed.
45. The Answering Respondent No. 4 has been carrying out the mining activity in the subject PEKB Mine since 2013-14 after obtaining the directions from the Hon'ble Supreme Court of India.

D. Various Environmental Expert bodies have duly applied their mind:

46. The decision of Phase-II mining in PEKB mine has been taken with due application of mind by 4 expert bodies i.e. ICFRE in aid with WII, FAC while taking into account 3-member sub-committee's

site inspection report as well as BAR Report-2021, MoEF &CC and the State Government. The FAC had complied with the directions passed by the Ld. NGT and followed due procedure and recommended the proposal for Phase-II mining on 23.12.2021. Subsequently, after considering the recommendation of State Government and the FAC, the MoEF & CC has accorded its approval for commencing of Phase-II mining to RRVUNL.

47. It is most respectfully submitted that the ICFRE and WII are renowned institutes with specialized and expert knowledge of environment and forest. It is further relevant to note that the ICFRE Report was submitted in July, 2021 to the State Government and subsequently forwarded to the MoEF on 08.10.2021. Thereafter, the Forest Advisory Committee (FAC) met on 21.10.2021 wherein it appointed a 3 member sub-committee for inspecting the compliances carried out by the Answering Respondent in PEKB mine on the basis of BAR Report.

48. The 3 member sub-committee submitted its detailed report to the FAC and recommended the Phase-II mining permission to the FAC. When the FAC met on 23.12.2021, it again considered the BAR Report-2021 and deliberated upon the 3 member sub-committee report. In light of the recommendations made by the ICFRE, the 3 member sub-committee, the FAC recommended Phase-II mining permission in favour of the Answering Respondent. Thereafter, MoEF &CC after considering the recommendations of the ICFRE, FAC, granted Phase-II mining permission in favour of the Answering Respondent on 02.02.2022. This was subsequently followed by the consequential forest diversion orders dt. 25.03.2022 in balance 1198 ha of Phase-II

PEKB mine, passed by the Chhattisgarh Government which resulted in the tree felling activity. Hence, when 4 expert bodies including ICFRE, Forest Advisory Committee (considered the 3 member PEKB site inspection sub-committee report), State Forest Department and MoEF &CC have duly applied their mind and considered the BAR Report in detail, the intervention application by the Applicant organization must not be entertained and be dismissed by this Hon'ble Tribunal.

49. It is submitted that with the contents of the Intervention application, the Applicant is attempting to substitute its own opinion for the views and opinions of the experts. The averment of Applicant that the WII report is for no mining permission except in ongoing portion of PEKB mine is a result of selective and incomplete reading of the said report. In any event, it is submitted that the final decision to permit mining lies with the ministry, i.e. MoEF & CC. MoEF &CC after carefully considering the report of the FAC, the sub-committee report and the BAR Report by ICFRE and WII, vide order dated 02.02.2022, has taken a well-considered decision to grant permission for commencement of mining in Phase – II of the PEKB Coal Block. This is in complete conformity with the directions of this Hon'ble Tribunal.

ISSUE OF NO-GO AREA:

50. It is submitted that the contention being raised by the Applicant that the HAC has been identified as a 'No-Go' area is absolutely erroneous and unsustainable. It is submitted that the criteria for categorizing an area as Go No Go was merely to facilitate the decision-making process and there was no statutory obligation to

implement the said policy. It is pertinent to mention here that the concept of Go-No-Go was consequently scrapped by the Group of Ministers and conveyed to all States and UTs vide letter dt. 30.08.2011. A True copy of the MoEF &CC letter dated 30.08.2011 is annexed herewith as **ANNEXURE R-9**.

Compliances and Mitigation Measures in PEKB Mine:

51. Insofar as the mitigation measures are concerned, the Answering Respondent No.4 has already been complying with Forest Clearance conditions and is ready to comply with additional conditions/mitigation measures as suggested by ICFRE.
52. It is submitted that Compensatory Afforestation Fund Management and Planning Authority ('**CAMPA**') is an authority constituted under the directions of this Hon'ble Court. In lieu of the tree felling activity, Answering Respondent has made an expenditure of Rs. 58.41 crores have been deposited in CAMPA for Compensatory Afforestation over total area of 3797 ha of degraded forest (Protected Forest). The area of 3797 ha of land is 2 times of the forest land of 1898.5 ha for which Forest Clearance has been granted.
53. A further amount of Rs 22 Crores have also been deposited in CAMPA by user agency on 17.09.2009 for implementation of the approved Wildlife Management Plan which is at implementation stage. Further, as per the ICFRE Report, additional 10 crores have been demanded by the State Forest Department which has already been paid by the RRVUNL for additional measures for wildlife management. Hence, the Wildlife Management Plan is already in the process of implementation in lines with the ICFRE

BAR Report,2021 with strict mitigation measures as suggested by WII and recommended by the ICFRE.

54. The RRVUNL has also been assisting the State Government in conservation and preservation of the flora and fauna of the areas as and when advised by the Forest Department.
55. An amount of 2 crores has been deposited with the State Government for “Harihar Chhattisgarh” (plantation & conservation flora) on 28.06.2016. Another amount of Rs. 12 lacs have been deposited with the Forest Department for upgradation of Sanjay Park at Ambikapur.
56. A financial outlay has been made for the establishment of the Rescue & Rehabilitation of Human-wildlife conflicts in the approved Wildlife Management Plan.
57. It is denied that the PEKB Mine has been involved in pollution relating to air and water. It is submitted that the Answering Respondent is mandated to file 6 months Environment Clearance compliance report which it has been filing. As per the Compliance Report filed by the Answering Respondent, there have been violations of any air or water pollution.

58. In view of the above facts and circumstance, the answering Respondent states that no audience or indulgence should be given to the present Applicant herein and the present Intervention Application be dismissed by this Hon'ble Tribunal.
59. The annexures R/1 to R/9 annexed to the present reply are true copies of their respective originals.

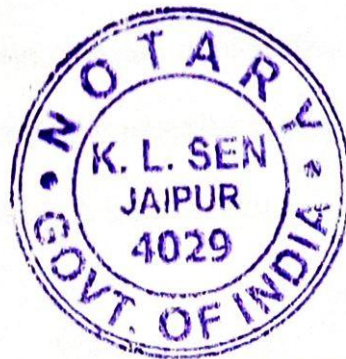

DEPONENT

Superintending Engineer (Fuel)
RVUN, Jaipur

VERIFICATION

I, Hem Raj, the abovenamed deponent, do hereby verify that the contents of the foregoing reply affidavit are true and correct to my knowledge and no part of it is false and no material has been concealed therefrom.

Verified at Jaipur on this 23 day of August, 2024




DEPONENT

Superintending Engineer (Fuel)
RVUN, Jaipur

ATTESTED

23 AUG 2024
NOTARY
JAIPUR (INDIA)

Item No.02

Court No. 1

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

Original Application No.59/2024

News item titled "**Deforestation for mining resumes in Hasdeo locals activists allege detention**" appearing in The Hindu dated 22.12.2023

Date of hearing: 22.01.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Respondent: Mr. Mahesh Kumar & Mr. Maharaj Singh, Advs. for R - 2
Mr. Abhinay Sharma & Ms. Deeksha Prakash, Advs. for CECE

ORDER

1. This Original Application has been registered in *suo-moto* exercise of powers on the basis of the news item titled "Deforestation for mining resumes in Hasdeo, locals, activists allege detention" appearing in The Hindu dated 22.12.2023. The news item alleges deforestation for mining activities in Hasdeo forest in Chhattisgarh and consequential protest in Sarguja District. It is alleged that the Forest Department has cut down trees to clear land for mining in Parsa East Kete Basan (PEKB) Phase-II.

2. A reply on behalf of the respondent no. 2, Principal Chief Conservator of Forest, Chhattisgarh, Forest Department has been filed. Learned Counsel for respondent no. 2 has submitted that the same issue had come up before the Tribunal in Appeal No. 73/2012, which was disposed of by the Tribunal by order dated 24.03.2014 and the order of the Tribunal was subject matter of challenge before the Hon'ble Supreme Court in Civil Appeal No. 4395/2014 in the matter of *Rajasthan Rajya Vidyut Utpadan Nigam Limited vs. Sudiep Shrivastava and Ors.* and the said appeal was disposed of by the Hon'ble Supreme Court by order dated 16.10.2023.

3. The order of the Tribunal which was subject matter of challenge before the Hon'ble Supreme Court has not been placed on record nor those orders which were subject matter of appeal before the Tribunal have been placed on record. Learned Counsel for respondent no. 2 seeks a week's time to place the same on record.

4. List on 21.03.2024.

Prakash Shrivastava, CP

Dr. A. Senthil Vel, EM

January 22, 2024
Original Application No.59/2024
SN.



//True Copy//

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (C) NO. 1344 OF 2016

PETITIONER:

Forest Right Committee
 Ghatbarra & ors

VERSUS**RESPONDENTS:**

Union of India & Ors

SYNOPSIS

By way of present petition, the petitioners are challenging the order dated 8.1.2016 passed by the Respondent no. 4, whereby the community forest rights granted to the petitioner village under the provisions of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 has been cancelled to benefit the Respondent no. 5 Company.

LIST OF DATES AND EVENTS

Date	Events
18.12.2006	Parliament enacted Scheduled Tribes and Other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006
12.1.2009	Respondent no. 5 company applied for diversion of forest land before Ministry of Environment and Forest.
30.7.2009	Ministry of Environment and Forest vide letter addressed to all Chief Secretaries of all states directed to complete the process of recognition of forest rights under the Forest Rights Act.
2.3.2011	Respondent No. 5 Company submitted a revised proposal for diversion of forest.
10.3.2011	Proposal of Respondent no. 5 company was placed before Forest Advisory Committee
20-21 June 2011	Forest Advisory Committee rejected the proposal of

	Respondent no. 5 Company
6.7.2011	Ministry of Environment and Forest granted permission for diversion for Stage I
2.10.2011	Gram Sabha of Ghatbarra passed resolution protesting the coal mining in their area.
6.2.2012	Villagers of village Ghatbarra submitted resolution referring to gram sabha dated 2.10.2011 before forest department requesting to stop coal inspection done by company.
5.3.2012	Villagers of village Ghatbarra again submitted representation to the officials highlighting the issue of FRA and PESA and requested for stopping the coal inspection being done by the company.
15.3.2012	Stage II clearance granted by Ministry of Environment and Forest.
10.11.12	Villagers of village Ghatbarra again submitted representation stating gram sabha under the provisions of PESA as allegedly conducted in 2009 was fraudulent.
September 2013	Title of community forest rights under the FRA granted to Village Ghatbarra
19.2.2014/ 20.2.2014	Gram sabhas of Village Salhi, Hariharpur and Fatehpur conducted Special Gram Sabha and passed 2 resolutions.
24.3.2014	Hon'ble NGT quashed the forest clearance granted to Respondent company.
3.9.2014	Collector replied to resolution passed on 3.9.2014.
10.9.2014	National SC/ST commission replied to the complained made in November 2012
8.1.2016	Respondent no. 4 cancelled the Community Forest Rights granted to Village Ghatbarra.
26.2.2016	Representation made to State level monitoring committee requesting to withdraw the order dated 8.1.2016
01.03.2016	Villagers of village Ghatbarra organized a protest and submitted memorandum to collector.

BILASPUR
DATED

Shishir
SHISHIR DIXIT
(COUNSEL FOR THE PETITIONER)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (C) NO. 1344 OF 2016

PETITIONER:

1. Forest Right Committee
Ghatbarra through its
President Banas Kumar
S/o. Shri. Sundar Sai, aged
about 40 years, R/o.
Village Ghatbarra, Tehsil
Udaypur, District Sarguja
(CG)
2. Hasdeo Arand Bachao
Sangharsh Samiti through
its Covenor Umeshwar
Singh Armo S/o. Shri
Siyambar Singh, aged about
35 years, R/o. Village
Jampani, Post Madanpur,
Tehsil Podi, District Korba
(CG)
3. Jainandan Singh Porte S/o.
Shri. Sukul Ram, aged
about 40 years, R/o. Village
Ghatbarra, Tehsil Udaypur,
District Sarguja (CG)

VERSUS

RESPONDENTS:

1. Union of India through Secretary, Ministry of Environment and Forest, Government of India, Paryawaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi - 110003
2. Union of India through Secretary, Ministry of Tribal Affairs, Government of India, Shastri Bhawan, New Delhi- 110001
3. State of Chhattisgarh through Secretary, Department of Forest, Mantralaya, Naya Raipur (CG)
4. District Level Forest Rights Committee (DLC) Sarguja through O/o. Collector (Tribal Welfare), Ambikapur, District Sarguja (CG)
5. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Vidyut Bhawan, Jyoti Nagar, Janpath, Jaipur (Rajasthan)

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA****1. PARTICULARS OF THE PETITIONER:**

As mentioned in the cause title.

2. PARTICULARS OF THE RESPONDENTS:

As mentioned in the cause title.

3. PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH THE PETITION IS MADE:

By way of present petition, the petitioners are challenging the order dated 8.1.2016 (ANNEXURE-P/1) passed by the Respondent no. 4, whereby the community forest rights granted to the petitioner village under the provisions of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 has been cancelled to benefit the Respondent no. 5 Company.

SUBJECT MATTER IN BRIEF:

That, the village Ghatbarra comprises mostly of tribal population and village has been granted Community Forest Rights under the provisions of Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter FRA) by Respondent no. 4 through order no.10378/a-19(1) 2012-13. However, the villagers were surprised to receive order dated 8.1.2016 issued by Respondent collector, wherein it has been mentioned that Community Forest rights granted to village Ghatbarra is cancelled as they are interrupting in mining work and directed tehsildar to seize the record of right. That, protecting forest and biodiversity for sustainable use, as is the right and duty of the villagers under the Act, is seen as interruption in development in the eyes of Respondents who are destroying densely rich forest for making profits by clearing the forest and mining the

area. Subsequent to the cancellation order dated 8.1.2016, the petitioners had written a letter dated 26.2.2016 to (i) President, State level Monitoring Committee, Forest Rights Act (ii) Secretary, Ministry of Tribal Affairs, Union of India, (iii) Secretary, Scheduled Tribes and Scheduled Caste Development Department, Government of Chhattisgarh and (iv) Collector, Surguja. Subsequently on 1.3.2016, the villagers of Ghatbarra had organized a protest against the said order and submitted memorandum to the collector's office in Surguja. A copy of this memorandum was also sent to (i) Chief Secretary, Chhattisgarh Government, (ii) Secretary, Ministry of Tribal Affairs, Union of India (iii) Secretary, Scheduled Tribes and Scheduled Caste Development Department, Government of Chhattisgarh. However, no response has been received for the abovementioned letters and memorandum and appeal to withdraw the order dated 8.1.2016.

4. WHETHER CAVEAT FILED IF YES, WHETHER COPY OF THE PETITION SUPPLIED TO THE CAVEATOR :-

To the best knowledge of the petitioner no caveat has been filed with regard to instant matter and he has not received any notice of caveat.

5. DELAY IN FILING THE PETITION, IF ANY AND THE EXPLANATION FOR IT, IF ANY :-

The Petitioners declare that there is no delay in filing the instant writ petition.

6. DETAILS OF THE REMEDIES EXHAUSTED :-

The petitioners declare that no other alternative and efficacious remedy is available to them, except to approach this Hon'ble Court under Article 226 of the Constitution of India for the redressal of his grievances by way of this instant petition.

7. MATTER PENDING OR FILED BEFORE ANY OTHER COURT ETC.:-

The petitioner further declares that he had not previously filed any application, suit or writ petition with respect to the instant subject matter of this before neither any competent court of law nor any such is pending before any of them.

8. FACTS OF THE CASE :-

8.1 That, the Petitioner is a Forest Rights Committee constituted under the provisions of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, falling within the scheduled area of District Sarguja and the present petition is being filed through President, who has been authorized by the Petitioner Committee through resolution to prefer this instant petition. Copy of the Resolution is filed herewith as ANNEXURE-P/2. That, the village comprises mostly of tribal population and village has been granted Community Forest Rights under the provisions of Scheduled tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter. FRA) by

Respondent no. 4 through order no.10378/a-19(1) 2012-13. A copy of the order is filed herewith as ANNEXURE-P/3.

8.2 That, On December 18th, 2006, Parliament of India enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter Forest Rights Act). As per the preamble of the said legislation it's objects are :

To recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land;

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those

who were forced to relocate their dwelling due to State development interventions.

8.3 - That, The Forest Rights Act is a beneficial legislation intends to remedy the "historical injustice" done to the Scheduled Tribes and other traditional forest dwellers, as well as the resultant of "long standing insecurity of tenurial and access rights" as a result of the failure to recognise their rights.

8.4 That, Sections 2(c) and 2(o) of the aforesaid legislation define the "classes" of persons who constitute "forest dwelling Scheduled Tribes" and "Other Traditional Forest Dwellers". As per section 2(c) of the Act, the term "forest dwelling scheduled tribe" means *the members of community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest land for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.* As per section 2(o) of the Act, the term "other traditional forest dweller", being the second class of persons entitled to rights under the Act, is defined as follows:

"other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depends on the forest or forests land for bona fide livelihood needs.

Explanation: For the purpose of this clause, "generation" means a period comprising of twenty five years.

8.5 That, section 3(1) of the Act goes on to prescribe a comprehensive list of the rights of forest dwellers who belong

to these two classes. Section 3(2) of the Act states about diversion of forest land for the facilities mentioned therein and proviso to the aforesaid section clearly states that clearance if any granted to any developmental project shall be subject to the condition that the same is recommended by the Gram Sabha.

- 8.6 That, the Act further clearly states that forest rights conferred shall be free of all encumbrances and procedural requirements. The Act nowhere states that rights granted to individual or community can be revoked or cancelled. In fact, the Act merely provided for "Recognition" and "Vesting" of traditional rights enjoyed by the Villagers, rather than the grant of any fresh right, as seen to have been inferred by Respondent no. 4 in its order dated 8.1.2016. Further, the Act has been enacted by the Central government and power to frame rules rest entirely with the central government.
- 8.7 That, in the year 2006-07 the Ministry of Coal allotted Parsa East and Kete Basen captive coal block to Respondent no. 5 Company. That, thereafter the Respondent company applied for diversion of forest land admeasuring 2388.525 hectares before Ministry of Environment and Forest on 12.1.2009, thereafter the Respondent company again submitted a revised proposal on 2.3.2011 whereby the forest area was reduced and mining was to be done in 2 phases.

8.8 That, the aforesaid proposal was placed before Forest Consultation committee for approval on 10.3.2011. The committee constituted a sub committee to inquire and inspect and submit a report to consultation committee. The sub committee on 14-15 May 2011 visited the proposed area and after inspection submitted its report to the consultation committee. In the said report the sub committee raised various issues such as density of the forest and habitat of the wild animals and also that provisions of FRA are not within the knowledge of the villagers and procedure of FRA is not yet completed and is still pending. The Forest Advisory Committee after examining the issue and taking into consideration the forest area and wildlife habitation rejected the proposal on 20-21 June 2011. Copy of the rejection order of proposal is filed herewith as ANNEXURE-P/4. The Ministry ignoring the recommendation of the committee granted the permission of diversion for first phase for coal mining on 6.7.2011. Copy of the permission of diversion is filed herewith as ANNEXURE-P/5. However the conditions of completing the forest rights procedure was incorporated in the said permission. Thereafter the permission for diversion of forest land for second phase was granted to the company on 15.03.2012 in principle. Copy of permission for diversion of land for second phase is filed herewith as ANNEXURE-P/6.

- 8.9 That, the Ministry of Environment and Forest has vide its letter dated 30.07.2009 addressed to Chief Secretaries of all States directed to complete the process of recognition of all forest rights under the Forest Rights Act and directed that all the proposals for diversion of forest land for non-forest purposes shall be considered after the process of complete recognition of forest rights is completed and the consent of the concerned gram sabhas is obtained for the proposed diversion. Copy of letter dated 30.7.2009 is filed herewith as ANNEXURE-P/7.
- 8.10 That, herein the Ministry ignoring its own circular and also ignoring the fact that the process of recognition of forest rights was still pending, granted permission to the Respondent Company for diversion of forest land for non-forest purpose.
- 8.11. That, the Villagers of village Ghatbarra in exercise of their traditional Community Forest Rights have been performing their duty of protecting the wildlife, forest and biodiversity and have been protesting against the cutting down of trees and destruction of the wildlife and biodiversity by the Respondent Company. On 2.10.2011, the gram sabha of Ghatbarra passed a resolution protesting against the coal mining in their village area. Copy of Resolution is filed herewith as ANNEXURE-P/8. On 6.2.2012 villagers of village Ghatbarra and the Van Samiti, referring to the gram sabha resolution dated 2.10.2011 submitted an application before forest department requesting

to stop coal inspection being done by the company. Copy of letter dated 6.2.2012 is filed herewith as ANNEXURE-P/9.

8.12 That, on 5.3.2012 the villagers of Village Ghatbarra again submitted representations to the officials highlighting the issue of FRA and PESA and requested for stopping the coal inspection being done by the Respondent Company. Copy of letter dated 5.3.2012 is filed herewith as ANNEXURE-P/10.

8.13 That, on 10.11.2012 the villagers of Village Ghatbarra again submitted representation to the concerned officials and also addressed the same to the respondents 1 to 4, including the Ministry of Environment and Forest. This representation highlighted that the requisite Gram Sabha under provisions of PESA as allegedly conducted in 2009 was fraudulent. Further, the representation highlighted that the procedure of FRA is not yet complete and the Gram Sabha is yet to certify the completion of the forest rights recognition process, as is required under the guidelines of the order dated 30.07.2009 by the Ministry of Environment and Forests. Thereby, the villagers requested for cancellation of Land Acquisition process. It is clearly evident from above that the community forest rights for Ghatbarra village had not been recognized. Copy of letter dated 10.11.2012 is filed herewith as ANNEXURE-P/11.

It may be noted that sections 12 B (3) of the The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of

Forest Rights) Amendment Rules, 2012 (hereinafter referred to as the FRA Amendment Rules) clearly outlines the responsibility of the State Administration to ensure the completion of the Forest Rights recognition process. It states that *"The District Level Committee shall ensure that the forest rights under clause (i) of sub-section (1) of section 3 relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages with forest dwellers and the titles are issued."* Further, the section 12 B (4) adds *"In case where no community forest resource rights are recognized in a village, the reasons for the same shall be recorded by the Secretary of the District Level Committee."*

8.14 That, in June 2013 the forest rights committee of village Ghatbarra submitted claim application forms for recognition of Community Forest Rights (CFR) under the provisions of the Act. Pursuant to this, vide recommendation dated 3/9/2013, the District Level Committee recommended the recognition of the community forest rights of the Village Ghatbarra. Based on this, the Community Forest Rights of Ghatbarra village, pertaining to clause 8(h) and Annexure III of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules 2012, were recognized

through order no. 10378/a - 19 (1) 2012-13, and the title provided to the Gram Sabha of Ghatbarra. That, it is pertinent to mention here that claim for grant of Community Forest Resource Rights, pertaining to clause 8(i) and Annexure IV of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules 2012, is still pending before the authorities.

8.15 That, on 19.2.2014 and 20.2.2014 the Gram Sabhas of Village Salhi, Hariharpur and fatehpur conducted a special Gram Sabha and passed 2 important resolutions, firstly under the provisions of Section 5 of FRA for conservation of Forest and secondly for grant of patta for community forest resources and recommendation of Community forest Right of entire forest area. Copy of resolution dated 20.2.2014 is filed herewith as ANNEXURE-P/12.

8.16 That, the collector on 3.9.2014 in reply to the resolution of Gram sabhas of 3 villages issued a letter stating therein that patta for community forest resource has not yet been provided as in respect of the same guidance has been sought from the Government and community forest right has not been granted in Village Salhi, Fatehpur and Hariharpur as the said compartment has already been allotted for coal mining. Copy of letter dated 3.9.2014 is filed herewith as ANNEXURE-P/13.

8.17 That, on 10.9.2014 a letter in reply to the complaint made in November 2012 was received from the National SC/ST commission wherein a letter of Collector Sarguja was enclosed, which stated that the provisions of FRA have not been violated as rights have been recognized to individuals and community forest rights have been recognized in the name of "Gondwana Vikas Samiti". The contents of said letter has major contradiction has one letter says that procedure of FRA is pending and other letter states that CFR has been granted in the name of "Gondwana Vikas Samiti" prior to diversion of land which is a total incorrect fact as "Gondwana Vikas Samiti" has not received any CFR and even otherwise CFR for seven villages cannot be granted to one Samiti. Copy of letter dated 10.9.2014 is filed herewith as ANNEXURE-P/14.

8.18 That, Section 3 (1)(i) of the FRA provides the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use and the same was being carried out villagers. However, the villagers were surprised to receive order dated 8.1.2016 issued by Respondent collector, wherein it has been mentioned that Community Forest rights granted to village Ghatbarra is cancelled as they are interrupting in mining work and directed tehsildar to seize the record of right. That, protecting forest and biodiversity for sustainable use, as is the

right and duty of the villagers under the Act, is seen as interruption in development in the eyes of Respondents who are destroying densely rich forest for making profits by clearing the forest and mining the area. It is further pertinent to mention here that the forest clearance granted to the Respondent Company has been cancelled by the Hon'ble National Green Tribunal vide judgment dated 24.3.2014. A copy of the judgment dated 24.3.2014 is filed herewith as ANNEXURE-P/15.

8.19 That, Subsequent to the cancellation order dated 8.1.2016, the petitioners had written a letter dated 26.2.2016 to (i) President, State level Monitoring Committee, Forest Rights Act (ii) Secretary, Ministry of Tribal Affairs, Union of India, (iii) Secretary, Scheduled Tribes and Scheduled Caste Development Department, Government of Chhattisgarh and (iv) Collector, Surguja. Copy of letter dated 26.2.2016 is filed herewith as ANNEXURE-P/16. Subsequently on 1.3.2016, the villagers of Ghatbarra had organized a protest against the said order and submitted memorandum to the collector's office in Surguja. A copy of this memorandum was also sent to (i) Chief Secretary, Chhattisgarh Government, (ii) Secretary, Ministry of Tribal Affairs, Union of India (iii) Secretary, Scheduled Tribes and Scheduled Caste Development Department, Government of Chhattisgarh. Copy of memorandum dated 1.3.2016 is filed

herewith as ANNEXURE-P/17. However, no response has been received for the abovementioned letters and memorandum and appeal to withdraw the order dated 8.1.2016.

8.20 That, the impugned order dated 8.1.2016 is illegal and without application of mind and is liable to be set aside on the following grounds:-

9. GROUNDS

- (i) for the reason that, the Forest Rights Act, does not allow for the cancellation of rights that have been vested to an individual or community. The Act only provides for the recognition and vesting of rights and not of cancellation of rights granted.
- (ii) For the reason that the DLC is not empowered to issue any such order of cancelling the rights granted to community under the Act. Further the grounds for cancellation are invalid and an encroachment on the rights and duties ascribed to the gram sabha under the FRA. Therefore, the said order shows clearly shows bias of the administration towards mining activity.
- (iii) for the reason that the Act has been enacted by the central government and power to frame rules rest with the central government and State government cannot take any decision with respect to rights conferred in the Act.
- (iv) even otherwise the diversion permission granted to respondent company prior to grant of community rights is nonest and illegal as the committee had already rejected the proposal and the Act specifically states that diversion shall be subject to the condition that the same is recommended by the Gram Sabha and herein the gram

sabha has already rejected their proposal and therefore the permission is illegal and nonest in the eyes of law.


10. Reliefs prayed :

In views of the facts and circumstance mentioned above, the petitioner humbly prays for the following relief(s):-

- (i) Set aside the order dated 8.1.2016 issued by respondent no. 4.
- (ii) hold that the Rights granted under the The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 cannot be cancelled or revoked.
- (iii) any other relief which this Hon'ble Court may deem fit be granted.

BILASPUR

DATED


SHISHIR DIXIT

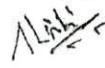
(COUNSEL FOR THE PETITIONER)

CERTIFICATE

It is certified that due care has been taken in the present case to comply with the provisions of Chhattisgarh High Court Rules.

BILASPUR

DATED 10.05.2016


SHISHIR DIXIT

(COUNSEL FOR THE PETITIONER)


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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Writ Petition (C) No.1346 of 2016

1. Forest Right Committee Ghatbarra, through its President Banas Kumar S/o Shri Sundar Sai, aged about 40 years, R/o Village Ghatbarra, Tehsil Udaypur, District Sarguja (C.G.)
2. Hasdeo Arand Bachao Sangharsh Samiti, through its Convenor Umeshwar Singh Armo, S/o Shri Siyambar Singh, aged about 35 years, R/o Village Jampani, Post Madanpur, Tehsil Podi, District Korba (C.G.)
3. Jainandan Singh Porte, S/o Shri Sukul Ram, aged about 40 years, R/o Village Ghatbarra, Tehsil Udaypur, District Sarguja (C.G.)

---- Petitioners

Versus

1. Union of India, through Secretary, Ministry of Environment and Forest, Government of India, Paryawaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi – 110003
2. Union of India, through Secretary, Ministry of Tribal Affairs, Government of India, Shastri Bhawan, New Delhi – 110001
3. State of Chhattisgarh, through Secretary, Department of Forest, Mantralaya, Naya Raipur (C.G.)
4. District Level Forest Rights Committee (DLC) Sarguja, through O/o Collector (Tribal Welfare), Ambikapur, District Sarguja (C.G.)
5. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Vidyut Bhawan, Jyoti Nagar Janpath, Jaipur (Rajasthan)

---- Respondents

SB

Hon'ble Shri Justice Sanjay K. Agrawal

8	
30/09/2022	Mr. B.P. Sharma, Ms. Shalini Gera and Ms. Sameeksha Gupta, counsel for the petitioners.

Mr. Tushardhar Diwan, Central Government Counsel for respondents No.1 & 2 / Union of India.

Mr. Chandresh Shrivastava, Additional Advocate General for the State / respondents No.3 & 4.

Dr. N.K. Shukla, Senior Advocate with Mr. Shailendra Shukla, Advocate for respondent No.5.

Heard on I.A.No.5 for grant of interim relief / stay.

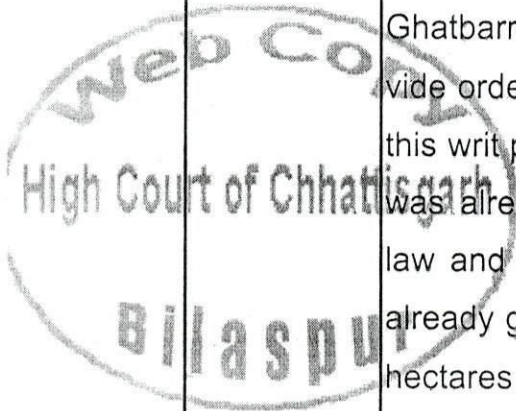
This application has been made on behalf of the petitioners seeking relief that felling of trees and any further destruction of forests of Village Ghatbarra, viz., Forest Compartments P-2002, P-2003 and P-2004 be stayed till the final disposal of the present writ petition, as in the writ petition notices have been issued on 13-6-2016 and return-rejoinder have been filed and hearing of the petition is likely to take time.

Reply has been filed by the State / respondents No.3 & 4 and also by respondent No.5 opposing the said application vehemently. . :

Mr. B.P. Sharma, learned counsel appearing for the petitioners, would submit that the writ petition has been entertained by this Court and is pending consideration since 11-5-2016 and return / reply has been filed by the respondents and since the respondents are felling trees, blocking off the access to the forests by barricading roads and putting Forest Rights Holders / villagers including the petitioners in confinement which is completely illegal and unjust, and number of trees are being cut, and on 27-9-2022, 5,000 tall & ancient trees have been felled in less than 12 hours and documents evidencing the said fact has been filed as Annexure A-1. He would further submit that

felling of trees is continuing which has been reported in the newspapers and which is completely illegal and the Vidhan Sabha of the State of Chhattisgarh has passed a resolution unanimously seeking to end all coal mining in Hasdeo Arand forests of which the impugned forest land is one part. This act of the responder is absolutely illegal, therefore, till the matter is heard finally or till the next of hearing, felling of trees be stayed.

Mr. Chandresh Shrivastava, learned Additional Advocate General appearing on behalf of the State / respondents No.3 & 4, would submit that the forest rights granted to the villagers of Village Ghatbarra Gram Sabha on 3-9-2013 have already been cancelled vide order dated 8-1-2016 which has been sought to be challenged in this writ petition, but even much prior to grant of forest rights, sanction was already granted for diversion of forest land in accordance with law and the Ministry of Environment, Forest & Climate Change had already granted forest clearance allowing forest diversion of 1898.328 hectares of forest land for PEKB Open Cast Mining Project way back on 15-3-2012 and thereafter, the Central Government on 2-2-2022 accorded approval for commencing phased mining in the balance area of 1136 hectares of forest land in respect of the proposal involving non-forestry use with the conditions prescribed therein. On the basis of the said approval, proper scheme was prepared for phase-wise cutting of trees in the mining area and vide order dated 5-5-2022, permission for 43.630 hectares of forest land has been allowed subject to the conditions imposed to be complied for cutting of trees. Copies of orders dated 2-2-2022, 25-3-2022 and 5-5-2022 have been filed as Annexures D-1, D-2 & D-3. He would further submit that so far as the issue with respect to Parsa East Kete Basen Coal Block, the matter is sub judice before the Supreme Court and as



such, the application for interim relief deserves to be rejected.

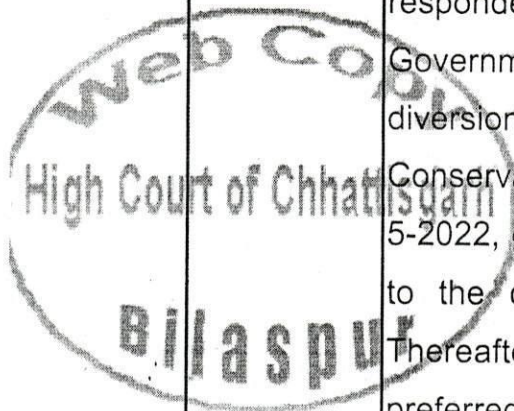
Dr. N.K. Shukla, learned Senior Counsel appearing for respondent No.5, would submit that in Appeal No.73/2012 (Sudiep Shrivastava v. State of Chhattisgarh and others), order dated 28-3-2012 passed by the State Government granting approval for diversion of forest land for PEKB Coal Block was challenged before the National Green Tribunal (NGT) and the said appeal was allowed by the NGT quashing the said order and also the earlier order dated 23-6-2011 against which SLP was preferred before the Supreme Court vide Civil Appeal No.4395/2014 (Rajasthan Rajya Vidyut Utpadan Nigam Ltd. v. Sudiep Shrivastava and others) and the order of the NGT was stayed by the Supreme Court by order dated 28-4-2014 and thereafter, interlocutory application has been filed by the respondent therein seeking interim relief pursuant to the order dated 28-4-2014. Two IAs have been filed before the Supreme Court vide Annexure R-5(18) on 13-4-2022 and vide Annexure R-5(20) on 4-5-2022 seeking stay of orders dated 2-2-2022 and 25-3-2022 issued by the State of Chhattisgarh. In the said IAs, notices have been issued to all the parties therein and now, the matter is fixed before the Supreme Court on 13-10-2022. In that view of the matter, the matter is sub judice before the Supreme Court, therefore, the application for interim relief deserves to be rejected.

I have considered the rival submissions made on behalf of the parties and perused the material available on record.

Order dated 28-3-2012 passed by the State of Chhattisgarh granting approval for diversion of forest land for PEKB Coal Block was set aside by the order of the NGT dated 24-3-2014 and it was directed that all work commenced by respondent No.5 herein shall stand suspended against which respondent No.5 filed Civil Appeal

No.4395/2014 and that order was stayed by the Supreme Court on 28-4-2014. Meanwhile, community forest rights under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to the villagers of Village Ghatbarra was granted and it has been cancelled by the impugned order dated 8-1-2016 which has been called in question in the instant writ petition. Thereafter, on 2-2-2022, Ministry of Environment, Forest & Climate Change granted approval for commencement of Phase-II mining operations in the balance 1136 hectares of forest land in respect of the proposal involving non-forestry use in favour of respondent No.5 and pursuant to the order dated 2-2-2022, the State Government vide Annexure D-2, passed order dated 25-3-2022 for diversion of forest land and thereafter, the Additional Principal Chief Conservator of Forests (Production), Chhattisgarh, by order dated 5-5-2022, granted permission for 43.630 hectares of forest land subject to the conditions imposed to be complied for cutting of trees. Thereafter, in the SLP before the Supreme Court, two IAs have been preferred which have been filed in the present writ petition by respondent No.5 herein as Annexures R-5(18) – application for urgency in terms of the circular dated 24-6-2021 and also Annexure R-5(20) – application seeking stay of orders dated 2-2-2022, 25-3-2022 & 6-4-2022, in which the Supreme Court by order dated 10-5-2022 is pleased to issue notices to the respondents therein and directed to file reply and thereafter, the matter has been fixed on 13-10-2022.

Pursuant to order dated 2-2-2022 issued by respondents No.1 & 2, the Central Government has accorded approval for commencing Phase-II mining operations in the balance area of 1136 hectares of forest land in respect of the proposal involving non-forestry use in



favour of respondent No.5 in Villages Parsa & Kete, Tahsil Udaipur, District Surguja, subject to conditions mentioned therein and thereafter, order dated 25-3-2022 has been passed by the State Government and subsequently, vide order dated 5-5-2022, permission for 43.630 hectares of forest land has also been accorded by the competent authority for cutting of trees subject to the conditions imposed therein. In the SLP pending before the Hon'ble Supreme Court, stay of orders dated 2-2-2022 & 25-3-2022 has been sought by filing IAs which are pending consideration before the Hon'ble Supreme Court and the matter is fixed for consideration on 13-10-2022 and more particularly orders dated 2-2-2022, 25-3-2022 & 5-5-2022 have not been questioned in the instant writ petition till this date, I am not inclined to grant interim relief as claimed by the petitioners. Accordingly, I.A.No.5 is rejected.

Certified copy as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

Sanjay

//True Copy//

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/EXTRAORDINARY JURISDICTION**

Civil Appeal No 4395 of 2014

Rajasthan Rajya Vidyut Utpadan Nigam Limited

Appellant

Versus

Sudiep Shrivastava and Others

Respondents

W I T H

Special Leave Petition (Civil) No 18103 of 2022

ORDER

Civil Appeal No 4395 of 2014

1 The appeal has arisen from an order dated 24 March 2014 of the National Green Tribunal¹. The NGT issued the following directions:

1 “NGT”

Signature Not Verified

Digitally signed by
CHETAN KUMAR
Date: 2024.03.18
16:50:36 IST
Reason: 

"1. Order dated 23rd June, 2011 passed by the respondent no.2-MoEF Government of India and consequential order dated 28th March, 2012 passed by the respondent no.1 State of Chhattisgarh under section 2 of the Forest (Conservation) Act 1980 for diversion of forest land of PEKB Coal Blocks are set-aside;

2. The case is remanded to the MoEF with directions to seek fresh advice of the FAC within reasonable time on all aspects of the proposal discussed herein above with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of bio-diversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna. (iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies. (v) What, is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora? (vi) What is their opinion about the Wildlife Management plan finally prescribed. (vii) What conditions and restriction do they propose on the mining in question, if they favour such mining? Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative source such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties.

3. The MoEF shall pass a reasoned order in light of the advice given by the FAC in accordance with law and pass appropriate order in accordance with law.

4. All work commenced by the respondent no.3 project proponent and respondent no.4 pursuant to the order dated 28th March, 2012 passed by the respondent no.1 State of Chhattisgarh under section 2 of the FC Act 1980, except the work of conservation of existing flora and fauna, shall stand

suspended till such further orders are passed by the MoEF in accordance with law.”

- 2 Since the order of the NGT, the Ministry of Environment, Forest and Climate Change² has granted approval for commencing Phase II mining operation for the Parsa East and Kete Basan (PEKB) Coal Block on 2 February 2022. Thereafter, the State of Chhattisgarh has on 25 March 2022 accorded permission for coal mining and for non-forest activity in respect of the Parsa East and Kete Basan Coal Block comprising 1136 hectares.
- 3 The above facts are not in dispute.
- 4 Since the order of the NGT has resulted in the above orders of MoEF&CC dated 2 February 2022 and of the State of Chhattisgarh dated 25 March 2022, Mr A N S Nadkarni, senior counsel appearing on behalf of the appellant states that the appeal is not pressed.
- 5 The appeal is accordingly disposed of.
- 6 Pending applications, if any, stand disposed of.

Special Leave Petition (Civil) No 18103 of 2022

- 1 The Special Leave Petition arose from an order dated 30 September 2022 of a learned Single Judge in IA No 5 of 2022 in Writ Petition (Civil) No 1346 of
- 2 “MoEF&CC”

2016. The learned Single Judge declined to entertain the prayer for interim relief primarily on the ground that proceedings were pending before this Court in which certain reliefs were claimed in respect the orders dated 2 February 2022, 25 March 2022 and 5 May 2022. The learned Single Judge had also indicated that there was no challenge to the orders at that stage.

- 2 Mr C U Singh, senior counsel appearing on behalf of the petitioner states that an application for amending the writ petition has been filed before the High Court which is pending.
- 3 By a separate order passed today, Civil Appeal No 4395 of 2014³ instituted before this Court has been disposed of as not pressed.
- 4 Since the writ petition under Article 226 of the Constitution is pending before the High Court, it would be appropriate and proper to relegate the petitioners to pursue their rights and remedies in accordance with law. Since the application for interim relief in IA No 5 of 2022 was not considered by the High Court for the reasons which have been indicated above, we clarify that it will be open to the petitioners to move an application for seeking interim relief. The above liberty is subject to such objections which the contesting respondents may have to the grant of interim relief. This Court has not expressed any opinion on the merits of the challenge before the High Court.

3 “Rajasthan Rajya Vidyut Utpadan Nigam Limited vs Sudiep Shrivastava and Others”

- 5 The Special Leave Petition is accordingly disposed of.
- 6 Pending applications, if any, stand disposed of.

.....CJL.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
October 16, 2023
CKB

ITEM NO.26

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.4395/2014

RAJASTHAN RAJYA VIDYUT UTPADAN NIGAM LTD

Appellant

VERSUS

SUDIEP SHRIVASTAVA & ORS.

Respondents

(With IA No.2007/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.53863/2019 - CLARIFICATION/DIRECTION, IA No. 53848/2019 - EXEMPTION FROM FILING O.T., IA No.5912/2023 - EXEMPTION FROM FILING O.T., IA No.71319/2022 - EXEMPTION FROM FILING O.T., IA No. 66757/2021 - EXEMPTION FROM FILING O.T., IA No. 134831/2023 - EXEMPTION FROM FILING O.T., IA No. 53864/2019 - EXEMPTION FROM FILING O.T., IA No. 86937/2023 - EXEMPTION FROM FILING O.T., IA No. 86934/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 32860/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 53847/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 71316/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 4/2014 - PERMISSION TO FILE ANNEXURES, IA No. 3/2014 - PERMISSION TO FILE ANNEXURES and IA No.1/2014 - STAY APPLICATION)

WITH W.P.(C) No.371/2019 (PIL-W)

(With IA No.97095/2022 - APPLICATION FOR PERMISSION, IA No.28837/2023 - APPLICATION FOR PERMISSION, IA No.49251/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No.97098/2022 - EXEMPTION FROM FILING O.T., IA No.49254/2019 - EXEMPTION FROM FILING O.T., IA

No.168205/2019 - INTERVENTION/IMPLEADMENT and IA No.5925/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

S.L.P.(C) No.18103/2022 (IV-C)

(With IA No.24570/2023 - APPLICATION FOR PERMISSION, IA No. 17183/2023 - APPLICATION FOR PERMISSION, IA No 187284/2022 - APPLICATION FOR PERMISSION, IA No.154263/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No.174182/2022 - EXEMPTION FROM FILING O.T., IA No.164370/2022 - EXEMPTION FROM FILING O.T., IA No.154264/2022 - EXEMPTION FROM FILING O.T., IA No.185800/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.150385/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.174181/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.32885/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.23304/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.19260/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No.510/2023 (PIL-W)

(With IA No.87170/2023 - CLARIFICATION/DIRECTION and IA No. 87171/2023 - EXEMPTION FROM FILING O.T.)

Date : 16-10-2023 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) Mr. Atmaram N S Nadkarni, Sr. Adv.
Mr. S.S. Rebello, Adv.
Ms. Deepti Arya, Adv.
Ms. Arzu Paul, Adv.
Ms. Manisha Gupta, Adv.
Mr. Siddant Gupta, Adv.
Mr. Rishikesh Haridas, Adv.
Lavany Dhawan, Adv.
Mr. Ritik Gupta, Adv.
Mr. Kunal Verma, AOR

Ms. Yugandhara Pawar Jha, Adv.
Mr. Ashwin Kumar Nair, Adv.

WPC 371/2019 &
WPC 510/2023

Mr. Prashant Bhushan, Adv.
Ms. Neha Rathi, AOR
Mr. Kamal Kishore, Adv.
Ms. Kajal Giri, Adv.

SLPC 18103/2022

Mr. Chander Uday Singh, Sr. Adv.
Ms. Pyoli, AOR
Ms. Shalini Gera, Adv.
Mr. Archit Krishna, Adv.
Mr. Mayank Gautam, Adv.

For Respondent(s)

Mr. A.M. Singhvi, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Ms. Aanchal Mullick, Adv.
Mr. Arshit Anand, Adv.
Mr. Nidhiram, Adv.
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Mr. Prashant Bhushan, Adv.
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Mr. Tushar Mehta, SG
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Mr. Gurmeet Singh Makker, AOR
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Ms. Swati Ghildyal, Adv.
Mr. Shailesh Madiyal, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Mayank Pandey, Adv.
Mr. Madhav Sinhal, Adv.

Mr. Mahesh Kumar, Adv.
Ms. Prachi Mishra, Adv.

Mr. Aman Preet Singh Rahi, Adv.
Mr. Nikhilesh Kumat, Adv.
Mr. Dipesh Singhal, Adv.
Ms. Devika Khanna, Adv.
Ms. Rebecca Mishra, Adv.
Mr. Himanshu Kumar, Adv.
Mrs. V.D. Khanna, Adv.
Mr. Vmz Chambers, AOR

Ms. Pragati Neekhra, AOR
Mr. Aditya Bhanu Neekhra, Adv.
Mr. Aniket Patel, Adv.
Mr. Tushar Mehta, SG
Mr. Kartik Seth, Adv.
Ms. Shriya Gilhotra, Adv.
Mr. Prashanth Dixit, Adv.
Mr. Ankit Gupta, Adv.
Mr. Mahesh Bhati, Adv.
Ms. Arushi Rathore, Adv.
Mr. Saurabh Chaturvedi, Adv.
M/s. Chambers of Kartik Seth

Mr. Kunal Verma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal No 4395 of 2014 & SLP (C) No 18103/2022

- 1 The Civil Appeal and the Special Leave Petition are disposed of in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

Writ Petition (C) No 371 of 2019 & Writ Petition (C) No 5103 of 2023

- 1 List the Petitions 20 November 2023.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar

(Signed order is placed on the file)



//True Copy//

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1346 of 2016**

- 1 - Forest Right Committee Ghatbarra through its President Banas kumar S/o Shri Sundar Sai, Aged About 40 years, R/o Village Ghatbarra, Tehsil Udaypur, District Sarguja Chhattisgarh, Chhattisgarh
- 2 - Hasdeo Arand Bachao Sangharsh Samiti, through its Covenor Umeshwar Singh Armo S/o Shri Siyambar Singh, Aged About 35 Years, R/o Village Jampani, Post Madanpur, Tehsil Podi, District Korba Chhattisgarh, District : Korba, Chhattisgarh
- 3 - Jainandan Singh Porte S/o Shri Sukalu Ram, Aged About 40 Years, R/o Village Ghatbarra, Tehsil Udaypur, District Sarguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

Versus**---- Petitioners**

- 1 - Union of India Through Secretary, Ministry of Environment and Forest, Government of India, Paryawaran Bhawan, C.G.O. Complex Lodhi, Road, New Delhi, 11003, Delhi
- 2 - Union of India, through Secretary, Ministry of Tribal Affairs, Government of India, Shastri Bhawan, New Delhi, 110001, Delhi
- 3 - State of Chhattisgarh through Secretary, Department of Forest, Mantralaya, Naya Raipur Chhattisgarh, District : Raipur, Chhattisgarh
- 4 - District Level Forest Rights Committee (DLC) Sarguja, through O/o. Collector (Tribal Welfare), Ambikapur, District Sarguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
- 5 - Rajasthan Rajya Vidyut Utpadan Nigam Ltd., Vidyut Bhawan, Jyoti Nagar Janpath, Jaipur Rajasthan,, District : Jaipur, Rajasthan

(Cause-title taken from Case Information System)

---- Respondents

02-05-2024	<p>Ms. Shalini Gera, Mr. Amit K. Verma and Ms. Anushri Rajput, Advocates for the petitioners.</p> <p>Mr. Sumit Singh, Advocate for respondents No.1 and 2.</p> <p>Mr. Santosh Bharat, Panel Lawyer for the State/respondents No.3 and 4.</p>



Dr. N.K. Shukla, Senior Advocate with Ms. Priya Mishra, Advocate for respondent No.5.

I.A. No.10/2023 (application for amending the petition)

Learned counsel for the petitioners have submitted that the present petition has been filed against the order dated 08-01-2016 issued by respondent No.4 and for protection of the rights to the petitioners granted under the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter called as 'Forest Rights Act').

It is submitted by the petitioners that the village Ghatbarra comprises mostly of triable population and have granted community rights under the provisions of Forest Rights Act, through order No.10378/a-19(1) 2012-13. On 08-01-2016 an order is issued by respondent No.4 that forest rights granted to village Ghabarra is cancelled. To protect the forest and biodiversity and the rights and duty to the villagers they moved their representation on 26-02-2016 to various authorities including organizing protest against the said order and the memorandum were submitted before the various authorities, higher authorities also. When the authorities have not responded, they have filed the instant petition.

In the instant petition application for grant of interim relief has been dismissed by the Coordinate Bench of this Court vide order dated 30-09-2022. Thereafter, the order dated 30-09-2022 was challenged by the petitioners before the Hon'ble Supreme Court by filing Special Leave Petition (Civil) No.18103/2022. The said special leave petition came up for hearing before the Hon'ble Supreme Court on 16-10-2023 and the same is decided along with another petition, i.e. Civil Appeal No.4395/2014 as Rajashan Rajya Vidyut Utpadan Nigam Limited Vs. Sudiep Shrivastava



and others. It has been submitted before the Hon'ble Supreme Court ;that the application for amendment filed before the High Court which is pending. While passing the order dated 16-10-2023 the Hon'ble Supreme Court has observed in para 4 of its judgment that:-

“4. Since the writ petition under Article 226 of the Constitution is pending before the High Court, it would be appropriate and proper to relegate the petitioners to pursue their rights and remedies in accordance with law. Since the application for interim relief in IA No 5 of 2022 was not considered by the High Court for the reasons which have been indicated above, we clarify that it will be open to the petitioners to move an application for seeking interim relief. The above liberty is subject to such objections which the contesting respondents may have to the grant of interim relief. This Court has not expressed any opinion on the merits of the challenge before the High Court.”

It is further submitted by learned counsel for the petitioners that during pendency of this writ petition and without settlement of any community forest rights of Ghatbarra village respondent No.5 applied for permission to start mining in phase II forest area. The respondent No.1 Ministry of MoEFCC, granted approval to commence Phase II mining operations in the balance forest area of 1136 hectares vide order dated 02-02-2022 (Annexure -P/23) and consequently, respondent No.3/State has also granted permission for diversion of 1136 hectares of forest land to start Phase II mining operations in the remaining forest area, vide order dated 25 -03-2022 (Annexure-P/24). The APCCF granted permission vide





order dated 05-05-2022 to the respondent No.5 to fell 7960 trees in 43.63 hectares of forest land in Phase II mining area which completely overlapped forest area in the CFR Title which is subject to the present writ petition.

It is also submitted by learned counsel for the petitioners the order dated 02-02-2022 passed by the MoEFCC granting permission for Phase II mining in 1136 hectares of forest land and second order of the State Govt. passed on 25-03-2022 and 05-05-2022 has been passed without prior settlement of forest rights in that area which is violation of Section 4(5) of the Forest Right Act as well as the Forest (Conservation) Rules of 2003. It is further submitted that before granting of final approval the settlement of forest rights and approval of Gram Sabhas concerned must be considered before grant of final approval. Learned counsel for the petitioners further submits that by filing the application I.A.No.3/2022 filed on 06-05-2022 the petitioners brought to the notice of this Court the order dated 02-02-2022 and 25-03-2022 passed by the State Government with respect to diversion of 1136 hectares of forest land for mining. He would also submitted that an application for grant of ad-interim relief, I.A. No.4/2022 filed on 06-05-2022 the petitioner have stated that operation of abovementioned orders would destroy the forest rights of the petitioners and it would render the instant writ petition infructuous and prayed for grant of ad-interim relief. In these I.As. no effective hearing could take place and on 27-09-2022 tree felling and forest destruction started. On 28-09-2022 the petitioners filed another I.A. seeking interim relief and prayed that the respondents be restrained from felling of trees and from further destruction of forests of village Ghatbarra. Vide order dated 30-09-2022



the Coordinate Bench of this Court has denied the interim relief and it was pointed out that the petitioners had not challenged the relevant orders permitting mining in the said forest land, viz. orders dated 02-02-2022, 25-03-2022 and 05-05-2022.

The order dated 30-09-2022 was challenged by the petitioners before the Hon'ble Supreme Court by filing Special Leave Petition (Civil) No.18103/2022 which was came up for hearing on 16-10-2023 along with Civil Appeal No.4395/2014 and after hearing the parties the SLP(C) No.18103/2022 is disposed of with certain observations made in para 4 of the order dated 16-10-2023. It was submitted before the Hon'ble Supreme Court during course of the hearing that amendment application filed before this Court is pending. The petitioners are relegated to this Court to pursue their rights and remedies in accordance with law. Since the Coordinate Bench of this Court, while passing the order dated 30-09-2022 observed in its order that the orders dated 02-02-2022, 25-03-2022 and 05-05-2022 have not been challenged and further before the Hon'ble Supreme Court the non-challenge of the aforesaid orders were raised and the parties are relegated to this Court to pursue their remedies, the petitioners are claiming amendment in their writ petition with respect to challenge these three orders and the ground of challenge in the following manners :-

"17. The petitioners prays that in order to challenge the validity of the said orders dated 2.2.2022, 25.3.2022 and 5.5.2022, the following grounds may be incorporated:

"9(v) For the reason that the approval of the Central Government u/s 2 of the Forest Conservation Act 1980 dated 15.03.2012 was set aside as a necessary implication of the NGT dated 24.03.2014, as it



sets aside the MoEF order dated 23.06.2011 (Annexure P-27). Till date, there is no new approval u/s 2 of the FCA for the entire forest area of 1898.328 ha. Without such an approval, no mining can be permitted in the forest area under the PEKB coal block, and thus the orders of the R-1 Respondent Ministry, MoEFCC dated 2.2.2022 allowing commencement of Phase II mining in PEKB and consequential orders of the State government dated 25.03.2022 and 5.5.2022 diverting forest land for mining purposes are bad in law and illegal.

9(vi) For the reason that section 4(5) of the FRA 2006 specifically prohibits any eviction or removal of forest dwellers from forest land without the complete settlement of forest rights on that forest land. Since community forest rights have not yet been settled with respect to the claims of the Gram Sabha of village Ghatbarra, the three above orders dated 02.02.2022, 25.03.2022 and 05.05.2022 are in violation of the FRA, and hence, illegal and *non est*.

9(vii) For the reason that the Forest (Conservation) Rules of 2003 (as applicable at the time of the orders dated 02.02.2022, 25.03.2022 and 05.05.2022) clearly stipulate that the final approval of the Central Government for diversion of forest land for non-forestry purposes under section 2 of the FCA can only be made after the settlement of forest rights over the concerned forest land, and the consent of the Gram Sabhas has been obtained. This is evident in the following rules-

Rule 6. *"Submission of proposal seeking approval of the Central Government under section 2 of the Acts*



.....

(3)(e) The District Collector shall-

(i) complete the process of recognition and vesting of forest rights in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) for the entire forest land indicated in the proposal;

(ii) obtain consent of each Gram Sabha having jurisdiction over the whole or a part of the forest land indicated in the proposal for the diversion of such forest land and compensatory and ameliorative measures, if any, having understood the purposes and details of diversion, wherever required; and

(iii) forward his findings in this regard to the Conservator of Forests;"

Rule 8. "Submission of report on compliance to conditions stipulated in the in-principle approval and grant of final approval

.....

(g) in case the Conservator of Forests finds that the compliance report is complete in all respect, he shall forward such report along with the report on completion of the process of recognition and vesting of forest rights and consent of the each Gram Sabha received from the District Collector referred to in sub-clause (f) of sub-rule (3) of rule 6, to the Nodal Officer within a period of fifteen days of its receipt from the Divisional





Forest Officer:

Provided that in case the Conservator of Forests finds that the compliance report is incomplete, he shall communicate the shortcoming or shortcomings in the compliance report to the User Agency and the Divisional Forest Officer within a period of fifteen days of its receipt from the Divisional Forest Officer,"

9(vii) For the reason that by way of compliance with Rule 6(3)(e) of the Forest Conservation Rules of 2003, the Handbook issued by the Respondent Ministry R-1 contains detailed set of forms to be filled out by the District Collector (Annexure P-29) that certifies, inter alia, that

(a) the complete process of recognition and vesting of forest rights under the FRA, 2006 has been carried out for the entire forest land proposed for diversion.

(b) the proposal for such diversion (with full details of the project and its implications, vernacular/ local language) have been placed before each concerned Gram Sabha or forest-dwellers, who are eligible under the FRA, 2006;

(c) each of the concerned Gram Sabha(s), has certified that all formalities/ processes under the FRA have been carried out, and that they have given their consent to the proposed diversion and the compensation and ameliorative measures, if any, having understood the purpose and details of proposed diversion.

(d) the discussion and decisions on such proposals had taken place only when there was a quorum of minimum 50 % of the members of Gram Sabhas present

(e) the diversion of forest land for facilities managed by the





Government as required under Section 3 (2) of the FRA have been completed and the Gram Sabhas have given their consent to it.

As no such certificate by the District Collector has been prepared in the instant case, no approval or order for diversion of forest land is valid, and hence, the orders dated 02.02.2022, 25.03.2022 and 05.05.2022 are invalid and illegal.

9(viii) For the reason that the claims of the Ghatbarra Gram Sabha under sections 3(1)(d) with respect to water bodies, 3(1)(i), 3(1)(k) and 3(1)(l) have neither been recognized, nor have they been rejected by the District Level Committee. In respect of 3(1)(i), Rule 12B(3) of the Forest Rights Rules, 2008 specifically entrust the DLC with the responsibility of settling these rights -

"The District Level Committee shall ensure that the forest rights under clause (i) of sub-section (1) of Section 3 relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages with forest dwellers and the titles are issued."

18. The Petitioners pray that in order to challenge the validity of the said orders dated 2.2.2022, 25.3.2022 and 5.5.2022, the Reliefs Prayed may be amended to include the following:

"10(iv). Set aside the order dated 02.02.2022 issued by Respondent R-1, and the consequential orders dated 25.03.2022 and 05.05.2022 issued by Respondent State Government R-3.



10(v). Direct the DLC to expeditiously verify and vest the remaining community forest rights claims of the village Ghatbarra as made in their claim application dated 12.6.2013."

Learned counsel for the petitioners would further submits that the proposed amendments have been necessitated by the subsequent developments and do not change the basic character of the instant writ petition. No prejudice is caused to the respondents since the orders dated 02-02-2022 and 25-03-2022 are sub-judice before the Hon'ble Supreme Court in Civil Appeal No.4395/2014 and WPC No.510/2023. It is further submitted that the amendments sought by the application in the writ petition are clarificatory in nature. The respondents have rights consequential amendment in their reply or to file additional reply if the same is being allowed and they have every right to defend their case and therefore, they may be permitted to carry out the necessary amendment in the writ petition.

Learned counsel for the respondent No.5 would submit that by way of proposed amendments the petitioners seeks to incorporate the documents which has been filed along with I.A. No.3 dated 06-05-2022. Unless the petitioners press that I.A. No.3 and the documents are become the part of the writ petition it cannot be presumed that the documents has been made part of the writ petition. He would further submit that the application I.A. No.3 dated 06-05-2022 is for taking additional facts on record which refers to the document Ex.-P/23 and P/24 which are the orders dated 02-02-2022 and 15-03-2022.

In the earlier hearing Mr. Mukul Rohtagi, learned Senior Advocate would submit that the petitioners got rights of forest dwellers in 2012 that



was challenged in the National Green Tribunal (hereinafter called as 'the NGT') and that was set aside by the NGT in the year 2014. The order passed by the NGT was challenged before the Hon'ble Supreme Court in appeal. The Hon'ble Supreme Court by the order dated 28-04-2014 granted interim relief that there will be stay of the orders by which the works which commenced was suspended by the NGT. In other words the stay of the NGT was stayed by the Hon'ble Supreme Court by order dated 28-04-2014. The respondent No.5 commenced mining thereafter under the orders of the Hon'ble Supreme Court. Suffice to say that while the NGT passed the order suspending the mining activities the NGT has directed the respondent to get fresh permission and fresh biodiversity reports etc. then only recommence their mining activities. Though in the passage of 10 years before the Hon'ble Supreme Court the interim order continued the respondent No.5 worked under the direction of the NGT and when their appeal came up for hearing before the Hon'ble Supreme Court on 16-10-2023 the Hon'ble Supreme Court passed the order that since the order of the NGT, the Ministry of Environment, Forest and Climate Change (MoEF&CC) has granted approval for commencing Phase II mining operation for the Parsa East and Kete Basan (PEKB) Coal Block on 2 February 2022. Thereafter, the State of Chhattisgarh has on 25 March 2022 accorded permission for coal mining and for non-forest activity in respect of the Parsa East and Kete Basan Coal Block comprising 1136 hectares. Further observed that the above facts are not in dispute and has ordered that since the order of the NGT has resulted in the above orders of MoEF&CC dated 2 February 2022 and of the State of Chhattisgarh dated 25 March 2022, Mr. A.N.S. Nadkarni, learned Senior counsel



appearing on behalf of the appellant states that the appeal is not pressed and then the appeal was accordingly disposed of. He would further submit that the work of phase-I was exhausted under the cover of the interim order passed by the Hon'ble Supreme Court and thereafter orders dated 02-02-2022 and 25-03-2022 are passed approving the permission of mining for phase II. Since the respondent No.5 has obtained fresh permission for phase II, he did not therefore, prays the appeal before the Hon'ble Supreme Court because the old permission was suspended by the NGT which was suspended by the Hon'ble Supreme Court and then that matter is over. The later part that arose from the present proceeding are present before the Court. The Special Leave Petition (Civil) No.18103/2022 arose against the order dated 30-09-2022 in WPC No.1346/2016, the Single Judge declined to entertain the interim relief application on the ground that the proceedings were pending before this Court, but the order dated 02-02-2022 and 25-03-2022 is challengeable before the NGT and are not challengeable before the High Court. The petitioners have rights to file appeal before the NGT against the order granting fresh approval. The mining is to somehow challenge the order dated 02-02-2022 and 25-03-2022 but these two orders passed MoEFCC granting approval for mining area is challengeable in NGT. He would also submit that respondent No.5 have right to cut trees under the mining plan with the condition to put 10 times plantation of trees. Therefore, their purpose to amend and to challenge these orders in order to obviate the result of the appeal which they should prefer before the NGT. The writ petition is filed in the year 2016 and they are now wanting to amend the writ petition and want to bring two things, i.e., challenge the order dated



02-02-2022 and 25-03-2022 and vesting of the remaining community forest rights claims for the village Ghatbarra as made in their claim application dated 12-06-2013 and therefore the scope of the writ petition is entirely different from which now introduced. The amendment would not be granted for the simple reason that the order which they wish to impugn are orders challengeable before the NGT under Section 16 of the NGT Act 2010 and secondly in the while before the Hon'ble Supreme Court in last so many years the petitioners have not secured any orders and they made innocent statement that they will go and amend their writ petition, therefore the proposed amendments are not liable to be allowed.

In the earlier hearing Mr. Naman Nagarath, learned counsel for respondent No.5 would submit that merely because the petitioners have got certain rights does not act as the perpetual injunction in their favour so as to stop all activities, purpose of act is only even those who have been ousted they also needs to be recognized so that they may also be compensated. The petitioners have claimed in their writ petition that the order dated 08.01.2016 (Annexure-P/1) by which the rights of the petitioners is snatched away ultimately the relief would be that they would be entitled for certain compensation for the reason that they have certain rights over the forest land. The orders dated 02.02.2022 and 25.03.2022 are passed in consequence of the NGT's order.

Before advertent to the rival contentions put-forth by the either sides it would be required to consider the occasion arises for the amendment in the pleadings of the writ petition.

The present writ petition has been filed on 11 May, 2016 with the pleading and prayer to set aside the order dated 08.01.2016 issued by



respondent No.4 and to hold that the rights granted under the Scheduled Tribes and Other Traditional Dwellers (Recognition of Forest Rights Act), 2006 cannot be cancelled or revoked.

In the present case it is the pleading of the petitioners that they have been granted forest rights under the Forest Rights Act by order No.10378/a - 19(1) 2012-13, but vide order dated 08.01.2016 (Annexure-P/1) the forest rights of the petitioners have been cancelled. Thereafter the petitioners have approached before this Court to protect their forest rights. Although there is no interim order in favour of the petitioners, but they are pursuing their remedy by filing various applications either in the Court or before the appropriate authorities for redressal of their grievances. During pendency of the writ petition before this Court on 02.02.2022 the respondent No.1, Ministry of Environment, Forests and Climate Change (MoEFCC) granted approval to commence Phase – II mining operations in the balance forest area of 1136 hectares 6 years ahead of schedule. Subsequently, the State of C.G. has also granted approval for diversion of 1136 hectares of forest land to commence Phase- II mining operations in the remaining forest area vide order dated 25.03.2022. In furtherance thereof the APCCF also granted permission vide order dated 05.05.2022 to respondent No.5 to fell 7960 trees in 43.63 hectares of forest land in Phase – II mining area.

Since these three orders, i.e., orders dated 02.02.2022, 25.03.2022 and 05.05.2022 have been passed during pendency of the writ petition which give cause of action to the petitioners to challenge the orders by carrying out the amendment in the pleadings of the writ petition for which the application for amendment in the writ petition has been filed by the



petitioners.

It is well settled that the Court must be liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparably. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation.

In the matter of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another**, reported in 2022 SCC OnLine SC 1128, in para 22, 26, 27 and 29 of the judgment the Hon'ble Supreme Court has held as under :-

"22. It would be useful to also notice the observations of this Court in, *Pirgonda Hongonda Ptil v. Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363, wherein this Court considered an objection to the amendment on the ground that the same amounted to a new case and a new cause of action. In this case, this Court laid down the principles which would govern the exercise of discretion as to whether the court ought to permit an amendment of the pleadings or not. This Court approved the observations of Batchelor, J., in the case of *Kisandas Rupchand v. Rachappa Vithoba Shilwant* reported in ILR (1909) 33 Bom 644, when he laid down the principles thus:

"10. "All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties but I refrain from citing further authorities, as, in my opinion, they all



lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become bared by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same : can the amendment be allowed without injustice to the other side, or can it not.""

26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

27. In this behalf, in *A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation*, AIR 1967 SC 96 : (1996) 1 SCR 796, this Court held thus:

7. a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: *Weldon v. Neale* [[L.R.] 19 Q.B. 394]. But it is also well recognised that where the amendment does not constitute the



addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation:.....”

29. In *Pankaja v. Yellappa (dead) by Irs.*, (2004) 6 SCC 415, this Court held that it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would apposite to notice the observations of this Court in this pronouncement in extenso. The principles where laid down by this Court thus:

“12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

13. But the question for our consideration is whether in



cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitations an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

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16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392]. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the



discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.

xxx

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xxx

18. We think that the course adopted by this Court in Ragu Thilak D. John case [(2001) 2 SCC 472] applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.”

Hon'ble the Supreme Court in the matter of **M/s. Estralla Rubber Vs. Dass Estate (Private) Ltd**, reported in 2001 (8) SCC 97 held that mere delay in making the amendment application itself is not enough to reject the application for amendment, unless a new case is made out or serious prejudice is shown to have been caused to the other side so as to take away any accrued right.

The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of





limitation notwithstanding. But the exercise of such far reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court. Where amendment is found to be necessary for promoting the ends of justice and not for defeating the same, the application should be allowed.

As has been held in the matter of **Radhika Devi Vs. Bajrangi Singh and others**, reported in AIR 1996 SC 2358 and **Dondapati Narrayana Reddy Vs. Duggireddy Venkatanarayana Reddy**, reported in (2001) 8 SCC 115 it is settled that if a right accrues in favour of a party as the order impugned has not been challenged in time the said right cannot be taken away by seeking amendment in pleading. Further, normally amendment is not allowed if it changes the cause of action, but where the amendment does not constitute the addition of a new cause of action, or raises a new case, but amounts to not more than adding to the facts already on record, the amendment should be allowed even after the statutory period of limitation.

In **G. Nagamma & Ors. Vs. Siromanamma & Anr.**, reported in JT 1998 (4) SC 484, the Hon'ble Supreme Court observed that in an application for amendment, even an alternative relief can be sought; however, it should not change the cause of action or materially affect the relief claimed earlier. The Court may to certain extent allow the conversion of the nature of the suit provided it does not give rise to an entire new cause of action.

In the matter of **Pithanee Suryanarayana and Another Vs. Repaka**



Venkata Ramana Kishore and Others, reported in (2009) 11 SCC 308 it was held by the Hon'ble Supreme Court that court holds the power to allow such amendment provided: (i) application is bonafide, (ii) does not cause injustice to other side, (iii) does not affect the right(s) already accrued to the other side and the amendment should not change the basic structure of the proceeding.

While allowing the prayer for amendment of pleadings the court should avoid hypertechnical approach.

The respondents raised objection in proposed amendments on the ground that the three orders which the petitioners want to challenge by way of amendment in this petition is appealable before the NGT under Section 16 of the NGT Act would not be hurdle to incorporate the amendment in the present writ petition. The petitioners simply inserting the proposed amendment in their writ petition. The respondents are very well having their right to deny the pleadings and the prayer and may also raise their objection regarding maintainability of the writ petition if the proposed amendment is permitted to be incorporated in the writ petition which ultimately become a part of the pleadings and prayer. It is foreign to consider the merits of the amendment at the stage of considering the amendment application in the pleadings of the writ petition except while it changes the nature of writ petition. The merits of the amendment are to be examined only after incorporating the amendment in the pleadings and replied by the opposite party.

The petitioners would further submit that the rights of the villagers under the Scheduled Tribes and other Forest Dwellers (Recognition of



Forest Rights) Act, 2006 were protected by the statute itself and on their application partial rights were granted which have been withdrawn by the impugned order dated 08-01-2016 but for the remaining rights they are claiming since then by their application dated 12-06-2013 and the authorities have not decided their claim. Therefore, they want to amend the prayer for that also as para 10(v) in prayer column of the writ petition.

The present writ petition is filed on 11-05-2016 and on the date of filing of the writ petition, the cause of action for claim was already exist on that day itself because, the part of the claim which was granted earlier has been withdrawn and therefore, there was a threat on their right on that day itself when their rights have not been granted or when the partially granted rights have been withdrawn, the petitioners may claim at that time itself. In the opinion of this Court, permitting incorporation of new prayer as para 10(v) of prayer clause of writ petition as claimed by the petitioners, would amounts to change the very nature of the petition which take the prayer on the date of filing of the writ petition back under the Doctrine of relation back and entire scenario of the case would be reopened.

One more favourable aspect of the matter in favour of the petitioners is that all these three orders for which the petitioners seeking amendment in the writ petition has come into existence during pendency of the writ petition filed by the petitioners.

Considering the above factual aspects of the case and the law laid down by the Hon'ble Supreme Court, I am of the view that no prejudice will be caused to the opposite side if the petitioners are allowed to carry out the necessary amendments in their writ petition as sought for by them except



the prayer for amendment of prayer **clause 10(v)**. In the opinion of this Court the proposed amendment as sought for by them in 10(v) changes the complex of the writ petition and vary nature of the case. The said proposed amendment in the relief clause would take the matter back in the year 2013, that relief is claimed in the interest of public in general of village Ghatbarra which, if allowed, would certainly change the entire complexion of the writ petition.

For the foregoing reasons I.A. No.10 filed by the petitioners for amendment in the writ petition is partly allowed. The petitioners are entitled to carry out the amendment proposed in the pleadings in the writ petition as claimed in para 17 of the application I.A. No.10 and in para 18 upto the amendment in relief clause No.10(iv) and the prayer for amendment of the writ petition in relief clause by inserting a new prayer, i.e. "10 (v)" is rejected.

The respondents are at liberty to make their consequential amendments in their return/reply and may file necessary documents to rebut the amendment of the writ petition. The respondents are also at liberty to raise their objections available to them in the amended part of the writ petition, if so advised. Consequently, I.A. No.10/2023 is partly allowed.

The petitioners are directed to carry out the necessary amendment in the writ petition and to file the amended copy of writ petition as per rules.

I.A. No.13/2023

This is an application for appropriate orders filed by the petitioners on 21-12-2023.

By way of this application the petitioners prayed for appropriate order



to restrain the respondents from further destruction of forest area in PEKB Phase II mining till disposal of the instant writ petition.

As it has already been considered by the Coordinate Bench of this Court vide order dated 30-09-2022 and the application for grant of interim relief (I.A. No.5) has been rejected. The Coordinate Bench has already considered that the orders dated 02-02-2022, 25-03-2022 and 05-05-2022 have not been challenged in the writ petition. The order dated 30-09-2022 was challenged in the Hon'ble Supreme Court in Special Leave Petition (Civil) No.18103/2022. The said SLP has relegated the petitioners to this Court to pursue their rights and remedies in accordance with law. Since the application for interim relief in I.A. No.5 was not considered by this Court on the ground that the above three orders have not been challenged in the writ petition, the Hon'ble Supreme Court have given liberty to the petitioners to move an application for seeking interim relief and such liberty is subject to such objection which the contesting respondents may have to grant of interim relief.

Since the petitioners' application for amendment in the writ petition is partly allowed and they are permitted to carry out the necessary amendment and therefore, at this stage, this Court is not inclined to pass any orders on the application I.A. No.13 which is an application for appropriate orders and consequently, the same is rejected.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Item No. 02

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL**
(Through Video Conferencing)

Appeal No. 16/2022 (CZ)
(I.A. No. 54/2022)

Hashdeo Arand Bachao Sangarsh Samiti

Appellant(s)

Versus

MoEF&CC & Ors.

Respondent(s)

Date of hearing: **18.08.2022**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s):

Mr. Abhimanue Shrestha, Adv.

For Respondent(s):

None.

ORDER

1. The issue raised in this appeal was raised before the Principal Bench of this Tribunal in *Sudiep Shrivastava Vs. State of Chhattisgarh & Ors.*, 2014 SCC Online NGT 4. Aggrieved by the order, an Appeal (Civil Appeal No. 4395/2014) was filed before the Hon'ble Supreme Court of India. Hon'ble Supreme Court of India passed the following orders :-

"Since respondent No. 1 has already entered appearance through counsel. No formal notice need be issued to respondent No. 1. Let notice be issued to the other respondents. In the meanwhile, we stay the direction in the impugned order that all works commenced by the appellant pursuant to the order dated 28th March, 2012 passed by the State of Chhattisgarh under Section 2 of the Forest Conservation Act, 1980 shall stand suspended till further orders are passed by the Ministry of Environment and Forests."

2. Subsequent to this, fresh forest clearance was granted vide letter dated 12.04.2018 and the same was subject matter of Appeal No. 185/2018, which is pending before Principal Bench of this Tribunal.
3. Subsequently, in another matter environmental clearance granted to the coal blocks was challenged before Principal Bench in Appeal Nos. 12/2019 and 16/2019 and the matters are reported to be pending. Appeal No. 185/2018, Appeal Nos. 12/2019 & 16/2019 are pending before Principal Bench. Appeal before the Hon'ble Supreme Court is pending. The order passed in *Appeal No. 185/2018 titled Sudiep Shrivastava Vs. Union of India & Ors.* is quoted below :-

1. *“Only point which has been pressed in this appeal is that the Forest Advisory Committee has not taken a decision in the matter of granting Forest Clearance for diversion of the forest area for non-forest purpose. The reason given is only that the matter is pending before the Hon'ble Supreme Court.*

2. *Vide order dated 28.04.2014 in Civil Appeal No(s). 4395 of 2014 titled as “Rajasthan Rajya Vidyut Utp. Nigam Ltd. Versus Sudiep Shrivastava & Ors., following interim order was granted by the Hon'ble Supreme Court:*

“In the meanwhile, we stay the direction in the impugned order that all works commenced by the appellant pursuant to the order dated 28th March, 2012 passed by the State of Chhattisgarh under Section 2 of the Forest Conservation Act, 1980 shall stand suspended till further orders are passed by the Ministry of environment and Forests.”

3. *Thus, the stay granted is only with regard to the continuation of the work already commenced. There is no bar for the Forest Advisory Committee to take a decision in the matter. However, since the matter is pending before the Hon'ble Supreme Court, we do not consider appropriate to pass any further order in the matter.*

4. List after the decision of the Hon'ble Supreme Court in Civil Appeal No(s). 4395 of 2014. Adjourned sine die."

4. Principal Bench of this Tribunal in Appeal Nos. 12/2019 and 16/2019 passed an order dated 02.09.2021, which is as follows :-

"In view of order of this Tribunal dated 22.05.2020 in Appeal No. 185/2018, Sudiep Shrivastava v. Union of India , these matters may be listed after decision of the Hon'ble Supreme Court in Civil Appeal No. 4395/2014, Rajasthan Rajya Vidyut UTP. Nigam Ltd. v. Sudiep Shrivastava & Ors. on the file of the Hon'ble Supreme Court."

5. In light of the above facts and pendency of the Appeals on the same issue before the Principal Bench of this Tribunal and before the Hon'ble Supreme Court of India fresh Appeal is not maintainable. **Disposed of** accordingly.

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

18th August, 2022
Appeal No. 16/2022(CZ)
PN



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S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No.8720/2022

HASDEO ARAND BACHAO SANGARSH SAMITI

Appellant(s)

VERSUS

MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE & ORS.

Respondent(s)

(With IA No.180513/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.180510/2022-STAY APPLICATION and IA
No.180514/2022-EXEMPTION FROM FILING O.T.)

Date : 05-12-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHAFor Appellant(s) Mr. Abhimanue Shrestha, AOR
Mr. Divyansh Khurana, Adv.For Respondent(s) Mr. Atmaram Nadkarni, Sr. Adv.
Mr. Kunal Verma, Adv.
Ms. Yugandhara Pawar Jha, Adv.
Mr. Ritik Gupta, Adv.UPON hearing the counsel the Court made the following
O R D E R

- 1 Issue notice, returnable in four weeks.
- 2 Liberty to serve on the Central Agency and on the Standing Counsel for the States of Chhattisgarh and Rajasthan, in addition.
- 3 List the Civil Appeal on 10 January 2023.

Signature Not Verified
Digitally signed by
CHETAN KUMAR
Date: 2022.12.07
15:11:46 IST
Reason:

(CHETAN KUMAR)
A.R. -cum-P.S.(SAROJ KUMARI GAUR)
Assistant Registrar
//True Copy//

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4395 OF 2014

RAJASTHAN RAJYA VIDYUT UTP.NIGAM LTD

Appellant (s)

VERSUS

SUDIEP SHRIVASTAVA & ORS

Respondent(s)

(With appln(s) for ex-Parte stay,exemption from filing c/c of the impugned Judgment,permission to file additional documents and office report)

Date: 28/04/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. PATNAIK
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLAFor Appellant(s) Mr. Mukul Rohtagi, Sr. Adv.
Mr. Vikram Nankani, Adv.
Mr. Kirat Singh Nagra, Adv.
Mr. Monish Panda, Adv.
Mr. Arjun Khera, Adv.
Mr. Avneesh Arputham, Adv.
Mr. Kunal Verma, Adv.For Respondent(s) Mr. Raj Panjwani, Sr. Adv.
Ms. K.V.Bharathi Upadhyaya, Adv.For State of Chhattisgarh
Mr. Ravindra Shrivastava, Sr. Adv.
Mr. Atul Jha, Adv.
Mr. Sandeep Jha, Adv.
Mr. Dharmendra Kumar Sinha, Adv.For RR 4
Mr. Parag P. Tripathi, Sr. Adv.
Mr. Vikram Nankani, Adv.
Mr. Kirat Singh Nagra, Adv.
Mr. Manish Panda, Adv.
Mr. Arjun Khera, Adv.
Mr. Avneesh Arputham, Adv.
Ms. Monisha Handa, Adv.UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the appelalnts.

Issue notice.

Since respondent No. 1 has already entered
appearance through counsel. No formal notice need
be issued to respondent No. 1. Let notice be issued
to the other respondents.

In the meanwhile, we stay the direction in the impugned order that all works commenced by the appellant pursuant to the order dated 28th March, 2012 passed by the State of Chhattisgarh under Section 2 of the Forest Conservation Act, 1980 shall stand suspended till further orders are passed by the Ministry of Environment and Forests.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER



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F.NO.11-269/2012/FC

GOVERNMENT OF INDIA

MINISTRY OF ENVIRONMENT AND FORESTS

FC DIVISION

Paryavaran Bhavan

CGO Complex, Lodi Road

New Delhi- 110003

Dated 30.08.2012

To,

The Principal Secretary (Forests, State Governments of Madhya Pradesh, Chattisgarh, Jharkhand, Orissa and Maharashtra)

Subject: Proposal seeking prior approval of Central Government under the Forest Conservation Act, 1980 for diversion of forest land for coal mining projects.

Sir,

I am directed to say that a group of ministers (GOM) constituted by the Cabinet Secretariat vide their O.M. No. 121/4/3/2010- CAB. Dated 03rd February 2011 to consider the environmental and developmental issues relating to coal mining and other development projects inter alia decided that Go- No- Go for coal mining should be done away with and each of the proposals seeking diversion of forest land for coal mining be processed and considered by this Ministry on its merits.

Accordingly, I am directed to say that the state governments may kindly process the proposals seeking prior approval of the central government under the Forest Conservation Act, 1980 for diversion of forest land for coal mining projects in accordance with said decision of the GOM and send them to this ministry for its necessary action to consider these proposals on a case to case basis and on merit.

Yours Faithfully

Sd/-

(H.C. Chaudhary)

Assistant Inspector General of Forests

Copy to:

(1) The principal chief conservator of forests,

State Governments of Madhya Pradesh, Chattisgarh, Jharkhan, Orissa and
Maharashtra

(2) The nodal officer, Forest Conservation Act, 1980

State Governments of Madhya Pradesh, Chattisgarh, Jharkhan, Orissa and
Maharashtra


(3) The CCF (Central), Regional Office, Bhubaneshwar and Bhopal

(4) Guard file

Sd/-

(H.C. Chaudhary)

Assistant Inspector General of Forests



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

I.A. No.136 of 2024

IN

OA No.59 of 2024

IN SUO MOTO MATTER:

**In Re: DEFORESTATION FOR MINING RESUMES IN HASDEO,
LOCALS, ACTIVISTS ALLEGE DETENTION**

APPLICATION FOR CONDONATION OF DELAY IN FILING

REPLY

MOST RESPECTFULLY SHEWETH:

1. That, the above-mentioned matter was listed on 03.07.2024. On the said date, the answering respondent had sought for a weeks time to file reply to the main Original Application as well as replies to the Application for intervention. This Hon'ble Tribunal, vide its order dated 03.07.2024, had granted one weeks time to the Answering Respondent to file the replies.

2. That, however, in view of the fact that there are multiple proceedings pending before various forums, namely the Hon'ble Supreme Court, the Hon'ble High Court of Chhattisgarh and before this Hon'ble Tribunal. As such the record of the present matter is voluminous and bulky.
3. That, on account of the above, the Answering Respondent was collate all the record and thereafter the replies were drafted. After the replies were drafted, the Answering Respondent had got the same vetted from the Counsel.
4. This took sometime and as a consequence thereof, the Answering Respondent could not file the reply within a period of one week granted by this Hon'ble Tribunal and there is a short delay in filing the reply.
5. That, the delay is unintended and bonafide and is deeply regretted by the Answering Respondent.

PRAYER

In view of the above and in the interest of justice, the Hon'ble Tribunal may most graciously be pleased to:

- (a) Condone the delay in filing the present Reply; and
- (b) Pass any other and such further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

Filed by:



KUNAL VERMA

Advocate for Respondent No.4

Place: New Delhi

Dated: 24.08.2024

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

I.A. No. 136 of 2024

in

OA No. 59 of 2024

IN SUO MOTO MATTER:In Re: **DEFORESTATION FOR MINING RESUMES IN HASDEO,
LOCALS, ACTIVISTS ALLEGE DETENTION**AFFIDAVIT

I, Hem Raj, S/o Shri Nanag Ram, aged about 55 years, working as the Superintendent Engineer with Respondent No. 4, r/o 24, Chhaya Deep II Colony, Mahesh Nagar, Jaipur do hereby solemnly say and affirm as follows:

1. That I am the authorized representative of the Respondent No.4 - M/s Rajasthan Rajya Vidyut Utpadan Nigam Limited. ('RRVUNL') and well versed with the facts and circumstances of the case and as such competent to swear the present affidavit.

2. That, I have read and understood the contents of the accompanying I.A.

application for condonation of delay in filing the reply and I state that the contents thereof are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.


DEPONENT

Superintending Engineer (Fuel)
RVUN, Jaipur



ATTESTED

NOTARY
JAIPUR (INDIA)

23 AUG 2024

VERIFICATION

I, above named deponent do hereby solemnly state and affirm that the contents of the above reply are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Signed and Verified at Jaipur on this 23 day of August, 2024.


DEPONENT

Superintending Engineer (Fuel)
RVUN, Jaipur



ATTESTED


NOTARY
JAIPUR (INDIA)

23 AUG 2024



107

Kunal Verma <officeofkunalverma@gmail.com>

Service in the matter of I.A. NO.136 OF 2024 IN ORIGINAL APPLICATION NO.59 OF 2024 titled as News item titled "Deforestation for mining resumes in Hasdeo locals activists allege detention" appearing in The Hindu dated 22.12.2023.

1 message

Kunal Verma <officeofkunalverma@gmail.com>

Sat, Aug 24, 2024 at 3:54 PM

To: Lawchambera.ut@gmail.com, Shibani Ghosh <shibanighosh83@gmail.com>, architkrishnaoffice@gmail.com

Dear Sir/Madam,

We are the counsel for the Respondent No.4 Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (RRVUNL).
We are filing the Affidavit in Reply. Please treat this email as an Advance Service.

Please Find the Attachment.

Regards,

Kunal Verma,
Advocate-on-Record
Supreme Court of India

CHAMBER

D-113, Defence Colony,
New Delhi - 110 024
Ph: +91-11-3573 5005

KIND REGARDS
ADV. KUNAL VERMA

 **FINAL APPLICATION.pdf**

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