

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH, PUNE**

Original Application No. 46 / 2018

**Joint Forest Management Committee**

... Applicants

v/s.

**Principal Secretary,**

**Revenue & Forest Dept. (Forest) & Ors.**

... Respondents

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Pune

Date : 11/09/2021



*Aniruddha S. Kulkarni*

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3.4 JUL 2021

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Respondents

COMMENTS IN THE FORM OF AFFIDAVIT TO THE REPORT FILED  
 BY RFO, FOREST DEPARTMENT & MPCB, DATED 12-10-2020

ShamaNamu Mali, Applicant in the present case, do hereby state  
 on solemn affirmation that,

I have gone through the report dated 12-10-2020, filed by Shri.  
 Upendra Kulkarni, the Sub - Regional Officer, MPCB, and Shri.  
 Jagdish Narayan Yedalwar, Sub-Divisional Forest Officer, Nashik.  
 The Report is supported by various annexures. I have noted the  
 contents of the same.

2. I am filing these comments on the basis of the contents of the  
 saidreport.
3. The Forest Department accepts that the Murti area is part of  
 reserved forest.
4. The Forest Department accepts that boulders lying at the site are  
 derived from the carving of the Jain Murti. This supports the  
 contention of the Applicants.
5. The Forest Department has admitted that the Respondent No. 13  
 has constructed the approach road is made to the Murti site

*Shama Mali*

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allocated to them for Murti construction according to the 06/05/1999 forest clearance. In reality it needs to be observed that the said road is in excess of the 0.80 Ha. Respondent No. 13 has obtained post facto forest clearance dated 12/02/2018 for the said road and other amenities.

6. The Forest Department has given two contradictory findings in two different reports submitted by them on 09/08/2018 and 08/02/2019. In both those reports, the Forest Department states that Respondent No. 13 has occupied an area of 0.787 Ha. instead of 0.80 Ha. Whereas in the current joint report, it states that the Murti and the kaccha road is occupying 0.80 Ha.
7. It needs to be observed that 0.80 Ha was allocated exclusively for Murti construction. Forest Department is wrongly trying to include the approach road in the said 0.80 Ha. In reality, the approach road is in excess of 0.80 Ha.
8. The Forest Department has been observing the Respondent No. 13 dumping the stones and boulders out of Murti Carving over the forest land and chose to remain a mute spectator. It has failed to take action against the Respondent No. 13 in removal of the said encroachment over the forest land.
9. The Forest Department has not taken action against the massive encroachments done by the Respondent No. 13 and is protecting them.
10. The Forest Department accepts that the boulders have caused destruction of forest and biodiversity, yet it abstains from taking any action against the Respondent No. 13 for causing such destruction and restoring the forest land and biodiversity.
11. The Forest Department is plainly stating that removal of boulders is highly expensive and practically not feasible. It shows the intention of the Forest Department that they don't want to remove the said boulders encroaching the forest land and don't want to restore the forest land to its original state.
12. Those boulders remaining on the hill slopes pose a permanent threat to humans, animals and forest. They roll down haphazardly



*Manishi*

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destroying everything in their way. The Forest Department should suggest scientific ways of removing the boulders and should recover the cost of such removal from the Respondent No. 13 in addition to imposition of cost for destruction of forest land and biodiversity. It can take help of any independent expert agency like NEERI or IIT Bombay.

13. MoEF& CC, Govt. of India has issued Guidelines on 29-01-2018, for imposition of penalty on User Agencies for violation of FCA wherein proposal is under consideration for grant of Forest Clearance and forest land is diverted before grant of Forest Clearance. Copy of the Govt. of India's Guidelines dated 29/01/2018 is marked and annexed hereby as **Annexure A/A-1.**

14. According to Guideline B, **penalty for violation shall be equal to NPV of forest land per hectare for each year violation from the date of actual diversion as reported by the inspecting officer with maximum upto five times of NPV penalty plus 12 % simple interest till the deposit is made.** In the present case, forest land is damaged by Respondent No. 13 from 1999 till date and the NPV needs to be recovered jointly from State Forest Department as well as Respondent No. 13.

15. According to Guideline C, **violation/non - compliance of any conditions imposed while granting approval under FCA, penalty has to be imposed by the APCCF, for violation committed over forest area, without approval, equal to the normal NPV.**Guidelines of the Govt. of India letter dated 29/01/2018 need to be considered while imposing penalty on Respondent No. 13 and State Forest Department. Copy of the Govt. of India's Guidelines dated 29/01/2018 is marked and annexed as **Annexure A/A-2.**

16. As per the recommendations of the Central Empowered Committee, in IA No. 703 of 2001, dated 05/08/2002, environmental value of 1 Ha of 1.0 density forest is Rs. 1, 26, 74,000/-. The said observations of the CEC have been accepted by the Hon'ble Supreme Court in the Godavarman orders. Copy is marked and annexed as **Annexure A/A-3.**



*Full*

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 SL No. 739/2021  
 Dated

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17. According to the Applicants, around 20 Ha of the forest land has been actually destroyed due to various activities of Respondent No. 13. The damage amount should be recovered from Respondent No. 13 as per the above mentioned MoEF guidelines dated 29/01/2018 and the observations of the CEC in IA No. 703 of 2001, dated 05/08/2002.

Whatever is stated is true and correct to the best of my knowledge, information and belief and I affirm it to be true.

Place :

Date :

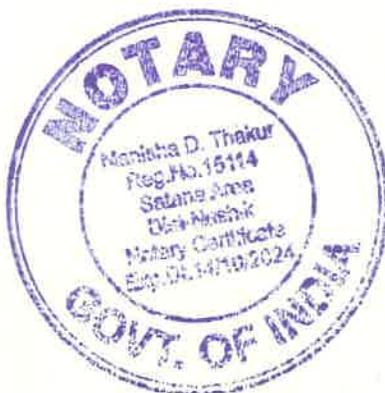
*Shama Mali*



I know the Affiant

Signed before Me

Solemnly affirmed by Shri  
Shama Namu Mali  
 Of Mangi Tungji has signed in  
 my presence and identified by  
Shri Selje  
 of whom I am personally known.  
 Date 14/7/2021.



**BEFORE ME**  
*Manisha D. Thakur*  
 Adv.  
 Signature of Notary  
 Manisha D. Thakur  
 Advocate & Notary  
 Satana-Nashik (Govt. of India)

**F. No. 11-42/2017 – FC**  
**Government of India**  
**Ministry of Environment, Forests and Climate Change**  
**(Forest Conservation Division)**

Indira Paryaravan Bhawan,  
 Aliganj, Jorbhagh Road,  
 New Delhi – 110003

Dated: 21<sup>st</sup> January, 2018

To

The Principal Secretary (forests)  
 All States/Union Territory Governments

**Sub: Activities which constitutes violations of provisions of Forest Conservation Act 1980 and rules made thereof and guidelines issued in this behalf, by user agencies and quantum of penalty to be imposed –regarding common guideline to be followed by FAC/REC while considering the proposal under FC Act 1980.**

Sir,

I am directed to invite your kind attention that the Forest Advisory Committee (FAC), constituted under Section 3 of the Forest Conservation Act 1980, while discussing proposals submitted under FC Act 1980, in its meeting held on 25.04.2017 noted with great concern somewhat inconsistent approach adopted by different Regional Empowered Committees of MoEF&CC and FAC itself in case of violations committed by user agencies of forest land in contravention of the provisions of Forest Conservation Act, 1980 and consequently recommending monitory penalty such as penal CA and penal NPV etc. in addition to mandatory compensatory levies. It was observed that the decisions to classify certain activities undertaken by the user agencies as violation and quantum of penalty imposed therein for the similar offence are different on different occasions due to absence of common guidelines.

2. It was, therefore, decided by the FAC to constitute a Committee of APCCF (central) Regional Offices, MoEF&CC and a member of the FAC to examine various aspects and different situations and activities which will constitute violations of provisions rules and guidelines issued under Forest Conservation act 1980 and suggest penalty in various situations, if the activities are treated as violation and thus as offence so as to dissuade the user agencies from committing such violations in future and compensate the loss caused due to such violation.

3. Accordingly on the recommendation of FAC, the following Committee was constituted vide this Ministry's letter of even number dated 05.06.2017.

|   |          |
|---|----------|
| i. Dr. Tejinder Singh, APCCF, Regional Office, Bhopal;    | Chairman |
| ii. Dr. Sanjay Deshmukh, Member, FAC;                     | Member   |
| iii. Sh. Kanwarjit Singh, APCCF, Regional Office, Nagpur; | Member   |
| iv. Sh. MRG Reddy, APCCF, Regional Office, Chennai;       | Member   |

4. The Committee submitted its recommendations to the Ministry on 15.05.2017 and the same was discussed in the Ministry and the final recommendation of the Committee was placed before the Forest Advisory Committee in its meeting dated 26.10.2017. The recommendation of the Committee was accepted and recommended by the FAC. The recommendations of FAC was placed before the competent authority in the Ministry. The

  
 28.1.18

competent authority has accepted the report of the Committee on the recommendation of the FAC.

3. Accordingly, this Ministry has decided to adopt following guidelines while imposing penalty in various cases, on the recommendations of FAC/REC after due deliberation in its meeting, for use of forest land for non-forestry purposes in violation of the provisions of the Forest (Conservation) Act 1980, Rules made thereof and guidelines issued from time to time to implement FC Act and Rules:

**A. In cases where the proposal under FC Act has not been submitted and forest land is diverted without FC:**

- i. Diversion of forest land for non-forestry purposes without the prior approval of the competent authority in the state will be dealt under the provisions of Indian Forest Act 1927 or State Forest Acts or any other State act dealing with such land as the case may be. The land in question will not be considered as diverted under FCA 1980 and the status of land shall continue to be Forest.
- ii. If the permission for use of forest land for non-forestry purposes have been granted by the state authority without the prior approval of the central government under section 2 of the Forest Conservation Act 1980 then action under section 3A and /or 3B of FC Act, as may be applicable shall be taken against the authority causing the diversion. A report with full details of violation shall be submitted by the State Government on the recommendation of the Forest Department of the State to the Ministry of Environment, Forests & Climate Change Government of India, New Delhi and formal enquiry shall be conducted by the Regional Office of the MoEF & CC.

**B. In cases where the proposal under FC Act is under consideration and forest land is diverted before grant of FC:**

- i. The penalty for violation shall be equal to NPV of forest land per hectare for **each year** of violation from the date of actual diversion as reported by the inspecting officer with maximum up to **five (5) times the NPV** plus 12 percent simple interest till the deposits is made.
- ii. In case of public utility projects of the government the penalty shall be 20 % of the penalty proposed in para (i) above.
- iii. State government will initiate disciplinary action against the official concerned for not being able to prevent use of forest land for non-forestry purpose without prior approval of Government of India.
- iv. User agency responsible for violation shall be prosecuted under local Act of the state for unauthorized use of forest land without the permission of state authority.

**C. Violation /non-compliance of any conditions imposed while granting approval under FC Act:**

In such cases the penalty will be imposed on the recommendation of the APCCF Regional office in whose jurisdiction the alleged violation has occurred. The violation will be reported to REC/FAC and the committee will give time to comply the conditions within stipulated time:

- i. In case the offence is proved then the penalty shall be imposed for violation committed over forest area without approval equal to twice the normal NPV.
- ii. In case of public utility projects of the government the penalty shall be 20 % of the penalty proposed in para (i) above.

**D. Violation on account of change of land use in the approved mining plan:**

- i. No penalty is to be imposed for such violation if the change is as per change in mining plan duly approved by competent authority. User agency shall intimate all approvals related to change in mining plan to the regional office within one month of approval. In other cases, change in land use plan shall not be carried out without prior approval of MoEF&CC under the provisions of FCA 1980.
- ii. Any violation of change in land use (other than mining operations), penalty of two times the NPV plus simple interest 12 per cent from the date of actual violation committed will be imposed.
- iii. In case the approved change in mining plan is not intimated within one month of the approval the same fine shall be imposed as in para D(ii).

**E. In cases where 'Forest land' has been changed to 'non forest land' in government records:** If the violation is not attributable to the user agency, no penalty shall be imposed.

This issue with the approval of the Competent Authority.

Yours faithfully,

  
29.1.18  
(Sandeep Sharma)

Assistant Inspector General of Forests

**Copy to:**

1. Prime Minister's Office
2. Secretary, Ministry of Mines/Coal/Steel/Power, Government of India.
3. Principal Chief Conservator of Forests, All States/UTs.
4. Nodal Officers, the Forest (Conservation) Act, 1980 All States/UTs.
5. All Regional Offices, Ministry of Environment, Forests and Climate Change.
6. Joint Secretary in-charge, Impact Assessment Division, MoEF&CC, New Delhi.
7. PS to Hon'ble Minister of Environment, Forests and Climate Change and Minister of State for Environment, Forests and Climate Change.
8. Chairman, State Environment Impact Assessment Authority, All States/UTs.
9. Member Secretary, State Environment Impact Assessment Authority, All States/UTs
10. All Directors/Assistant Inspector General of Forest in Forest Conservation Division of MoEF&CC.
11. All Advisors/Directors/Dy Directors in Impact Assessment Division of MoEF&CC.
12. Sr. Director (Technical), NIC, MoEF&CC with a request to place a copy of the letter on website of this Ministry.
13. PPS to the Secretary for Environment, Forests and Climate Change, New Delhi.
14. PPS to the Director General of Forests & Special Secretary, MoEF&CC, Gol.
15. PPS to the Addl. Director General of Forests (Forest Conservation), MoEF&CC, Gol.
16. PPS to the Inspector General of Forests (Forest Conservation), MoEF&CC, Gol.
17. Guard File.

  
29.1.18  
(Sandeep Sharma)

Assistant Inspector General of Forests

# Saving India's Forests and Wildlife

**The pioneering role of the  
Supreme Court of India**



**Published by Sanctuary Magazine  
Mumbai**

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This book is dedicated to  
those in the judiciary  
who have helped and continue  
to help save India's  
wildlife and natural heritage.

**EXTRACTS FORM  
THE SUPREME COURT OF INDIA  
ORDERS**

(1)

**RECOMMENDATIONS**  
**OF**  
**THE CENTRAL EMPOWERED COMMITTEE**  
**In**  
**I.A. No. 703 of 2001**

(Dated: 5.8.2002)

**(The I.A. was filed by Amicus Curiae Mr. Harish N. Salve, Senior Advocate, Supreme Court highlighting the serious problem of encroachments on forest lands).**

1. Notices for fixing the hearing of the above mentioned Interlocutory Application (I.A.) were served upon all the concerned parties through their Advocates and the present I.A. filed by the learned Amicus Curiae raises an important issue of decimation of forest taking place on account of large scale encroachments forest land particularly in the states of Orissa, West Bengal, Karnataka, Tamil Nadu, Assam, Maharashtra, Madhya Pradesh, Chattisgarh, Kerala and the Union Territory of Andaman & Nicobar Islands (A & N).
2. The Committee had co-opted the Chief Secretaries of all the Respondent States as Special Invitees, however, due to some reason or the other, only Chief Secretary, A & N attended the hearing.
3. The application points out that encroachments are still continuing even in national parks and sanctuaries and also in ecologically sensitive areas such as the Andaman & Nicobar Islands, evergreen forests in the North East and the Western Ghats regions. This is so even after the Hon'ble Supreme Court's order dated 12-12-1996 prohibiting any non-forest activity on forest land without obtaining prior approval of the Central Government under the Forest (Conservation) Act, 1980.
4. It is further stated in the application that the States are not taking adequate steps to removal post 1980 encroachments - possibly in the hope that these would be regularised by treating them as pre 1980 encroachments. This would make a complete mockery of the Forest (Conservation) Act, 1980 and the National Forest Policy, 1988.
5. The relief's claimed in the I.A. are that no encroachments should be regularised by the Union of India, further encroachments should be prevented, all post 1980 encroachments should be evicted, and state-wise committee's should be constituted to deal with this issue and report to the Hon'ble Supreme Court.
6. In the beginning of the hearing Shri A.D.N. Rao, Advocate representing the Ministry of Environment & Forests (MoEF) circulated a copy of the letter dated 3<sup>rd</sup> May, 2002 issued by the MoEF regarding removal of encroachments from forest land, a copy of the same is annexed hereto as ANNEXURE-A. The Ministry in the said letter estimated the forest area under encroachment to be around 12.5 Lakh ha. and has asked the States to :
  - (i) remove all encroachments, which are ineligible for regularisation in a time bound manner by 30<sup>th</sup> Sept. 2002;
  - (ii) prepare comprehensive list of encroachments with current status of eviction process;
  - (iii) constitute a cell in office of the Principal Chief Conservator of Forests (PCCF) to prepare plans and monitor eviction of encroachments on continuous basis;
  - (iv) delegate powers to the Forest Officers to hear encroachment cases and take adequate steps through summary trails; and

- (v) constitute a Committee under the Chairmanship of Chief Secretary for monitoring and fixing responsibility in case of failure to implement eviction plans and similar to set up committees at Circle level.
7. During the course of hearing the representatives of the States, Amicus Curiae and the Ministry of Environment & Forests expressed their views about the extent of encroachments, its main causes, difficulties faced by them, steps being taken for eviction, and also gave suggestions for effective and speedy removal.
8. The state-wise estimates of forest land under encroachments, as provided by the respondent States, are as under:

| S.No. | Name of the State | Area under encroachment (in ha.) |
|-------|-------------------|----------------------------------|
| 1.    | Orissa            | 47,300                           |
| 2.    | West Bengal       | 16,940                           |
| 3.    | Karnataka         | 91,000                           |
| 4.    | Tamil Nadu        | 18,600                           |
| 5.    | Assam *           | 2,54,711                         |
| 5.    | Maharashtra       | 73,000                           |
| 6.    | Madhya Pradesh    | 1,52,000                         |
| 7.    | Chattisgarh       | 62,270                           |
| 8.    | Kerala            | 10,040                           |
|       | Total             | <b>7, 25, 861</b>                |

\* As per records of the Ministry of Environment & Forests

9. The Committee is of the view that the actual area under encroachment is much higher as:
- the above table does not show the encroachments which continue to be treated by the concerned State Governments as pre 1980 encroachments, inspite of these being not eligible for regularisation under the Forest (Conservation) Act, 1980.
  - there is a general tendency to under report the extent of encroachment at the field level.
  - the encroachment figures in terms of the area are not regularly being updated.
10. The environmental value of one hectare of fully stocked forest of 1.0 density is Rs. 126.74 lakhs over a period of 50 years as per the assessments made by the Ministry of Environment & Forests. The environmental loss due to encroachments on forest land is estimated a mind boggling figure of Rs. 4,59,978 crores. This has been worked out by taking average density of such area as 0.5 and by accepting figures of area under encroachment as provided by the States to be correct.
11. The Committee is of the considered view that although individual encroachments may appear to be on small areas scattered here and there but cumulatively they have a devastating effect on the environment, destroying the bio-diversity, the hydrology, food security and threatening the ecological security of the country also the food security. The encroachments act like cancer in the forests spreading without pausing and eating into the vitals of the of the life supporting systems of nature destroying all upon which the life, including the human life itself depends. Unless and until an effective drive to remove of existing encroachments and prevent further encroachments is under-taken, it will be come impossible to save the forests for posterity.