

BEFORE THE NATIONAL GREEN
TRIBUNAL, PRINCIPAL BENCH AT NEW
DELHI

O.A. No. 266 OF 2022

Narayan Das & Anr

.....Petitioner

Versus

State of Himachal Pradesh & Ors

...Respondents

S.No	Particulars	P.No
1.	REPLY/RESPONSE BY WAY OF AFFIDAVIT ON BEHALF OF RESPONDENT NO. 03 i.e. CONSERVATOR OF FOREST SHIMLA FOREST CIRCLE SHIMLA IN COMPLIANCE TO ORDER DATED 20-01-2023.	1-10
2.	ANNEXURE R-1 Copy of Statement of the Applicant.	11
3.	ANNEXURE R-2 Copy of letter no C-28-B-1256/Shimla/11027 dated 02.01.2018.	12

Through

Respondent No.03.

Conservator of Forests.
Shimla Forest Circle. Shimla

Place: Shimla
Dated: 18/03.2023

Manish Kumar Advocate

Panel Counsel

For the State of H.P

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REPLY TO THE ORIGINAL APPLICATION No.
266/22 ON BEHALF OF RESPONDENT NO.-3.

MAY IT PLEASE YOUR LORDSHIPS:-

Preliminary submissions:-

1. That the Forests in Himachal Pradesh are known for their grandeur, majesty and beauty, like a green pearl. The Forest department being the custodian of the forest leaves no stone unturned for preservation of all the trees in HP, the HP Forest department is working hard for further extension of green cover. Nowhere or at any point of time forest department has permitted felling of any tree in violation of any rule or regulation.

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2. That the respondent department is doing its duty very earnestly and as per the prevalent rules and regulations. The respondent department has made sincere and earnest efforts to save the beauty of forest. It is submitted that the respondent department is committed to check and curb felling of trees from the government forest as well as to restrict the felling of trees even in the private land. The trees can be allowed to cut only with the prior approval of the competent authority. The replying respondent reiterates their commitment and assures this Hon'ble Court that every / all efforts are being made to preserve and protect the precious trees irrespective of their status.
3. That it is submitted that the respondent pays due regard and respect to the order and direction of Hon'ble Supreme Court of India, Hon'ble National Green Tribunal and also Hon'ble High Court of H.P and can never think of deviating from verdict of the Hon'ble courts to regulate the process of felling of trees in the state of HP. The provision of FCA, 1980 are being implemented robustly.
4. That the original application appears to be a result of revenge or rivalry as no felling of trees has taken place in the area in question. It is submitted that the HPSEB, is in occupation of the Khasra No. 308 Mauja Up-Mohal Banuti Tehsil and district Shimla HP. The state of

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3

HP is the owner as per revenue record. The HPSEB during the year 2017-18 had applied for felling of trees for the installation of MVA,33/111 Sub- Station at Banuti. The then Chief Conservator of Forests, Shimla Forest Circle vides its letter No. C-28-b-1265/Shimla/11027 dated 02.01.2018 has conveyed the approval for the felling of 26 trees of various species/classes besides 6 No. of sapling for the installation of MVA, 33/111 Sub- Station at Banuti.

5. That there exists Khasra No. 308/1 just abutting the Khasra No.308 the allegation with regard to illicit felling of numerous trees of various species as well as apprehension of cutting and felling of trees adjoining the playground so exist in 308/1 is not correct and hence strongly denied.
6. No Govt. Forest land exists in and around the Khasra no. it is pertinent to mention here that when the committee headed by Deputy Commissioner Shimla asked the complainant Sh. Narayan Dass about his grievances, he apprised that he has not made any complaint to any authority regarding cutting of trees and it is totally baseless. The statement of Sh. Narayan Dass recorded on 17.05.2022 and the same is enclosed as Annexure R-

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7. That the applicant has also filed the same complaint before the Hon'ble High Court of HP which was registered as CWPIL no. 24/2022 titled as Court on its own motion Vs state of HP and others. The Hon'ble High Court of HP had directed the state of HP to file the reply on the points of CWPIL as ascertained by the Hon'ble High Court HP. The state of HP filed the para wise reply and accordingly the Hon'ble High Court vide order dated 25-07-2022 held that *"the reply also records that the signatories of the complaint, treated as letter petition, in their statements recorded on 22.06.2022 have also disowned the complaint (the letter petition). In view of the reply filed by the respondent No. 4 , we do not deem it proper to continue further with this letter petition. The petition is accordingly closed and disposed of as such pending application, if any, also stand disposed of"*.

8. It is humbly submitted that the present OA has been filed by some miscreant with malafide intention and having no merit in this application and the present application being frivolous requires to be dismissed.

Reply on merit:

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That it is submitted that as per revenue record the Khasara No.308/1 is government land but the possession of the land is recorded as "Kabza Swayam Tabe Hakuk

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Shimla Forest Circle, Shimla

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Bartan Bartandaran”and the status of the land is “Charagah”. It is pertinent to mention here that Khasra No. 308/1 is in the ownership of Revenue Department & the forest Department is only the custodian of the forest. It is also admitted that adjacent to the playground which exists in Khasra No. 308 there exists forest in K.No. 308/1 and Deodar, Chil species are in majority in this Khasra number. The present OA came to be heard before the Hon’ble National Green Tribunal on 26-04-2022 when the Hon’ble NGT was pleased to direct as under:-

“In view of the serious allegations made in the present letter Petition, it would be appropriate to have a factual and action taken report from a Joint Committee comprising of State PCB, Divisional Forest Officer and Deputy Commissioner, Shimla. The State PCB will be the Nodal Agency for coordination and compliance. The joint committee may meet within four weeks, undertake site visits, look into the grievances of the applicants and take requisite action by following due process of law. Factual and action taken report may be furnished within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in form of Image PDF. List the matter for further consideration on 20.07.2022.

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In Compliance to the orders passed by Hon’ble National Green Tribunal on 26.04.2022, site inspection was

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6

carried out by the joint committee comprising of Deputy Commissioner Shimla, Divisional Forest officers Shimla and the Regional Officers HPSPCB Shimla on 19-05-2022. Sh. Narayan Dass the complainant was also present at site. The point wise factual report is as under:-

I. The site in question i.e. Khasra no. 308/1 falls in Mauja up-mohal Banuti, PO Rodi, Teh Shimla (Rural) Distt Shimla H.P. and the status of land is Charaghah. As per the revenue record the owner of the land is Govt. of Himachal Pradesh and the possession of the land is recorded as "*Kabja swyavam Tabe Hakuk Bartan Bartan-daran mitabik naksha Bartan*" measuring 33.56 Biswa.

II. In the alleged play ground, no such indicators e.g. stumps of the felled tree, logs/timber found on spot which proves that illicit felling of trees have taken place for the development of grounds. However the leveling of the land has been done using JCB and it is presumed that certain bushes have been removed from the site.

III. The HPSEB Ltd. is in occupation of the Khasra No. 308 Mauja Up- Mohal Banuti Tehsil and Distt. Shimla adjacent to the ground. The HPSEB Ltd. during the year 2017-18 had applied for felling of trees for the installation of 33KV Sub-Station and the then Chief Conservator of Forest, Shimla Forest Circle, Shimla vide letter No. C-28-B-1265/Shimla/11027 dated 2/1/2018

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conveyed the approval for the felling of 26 trees of various species/classes, besides 6 No. sapling for the installation of the said Sub-Station of the HPSEB Ltd.

IV. The said land forms part of the allotable pool of Revenue Department as certain land has been found allotted vide which residential houses have been found constructed.

V. No Government Forests land exists in and around the said khasra No. It is also pertinent to mention here that when Sh. Narayan Dass, the complainant was asked about his grievance he apprised that he has not made any complaint to any authority regarding cutting of trees and it is totally baseless. The status of the alleged land (Khasra No. 308/1) is Charagah and as per the revenue record, the owner of the land is Government of Himachal Pradesh. The possession of the land is recorded as "Kabza Swayam Tabe Hakuk Bartan Bartandaran". The said land is managed by the Revenue Department thus no legal control of the Forest Department is over the said land.

2. That in Khasra No.308 the HPSEB Ltd. is in possession and during the year 2016 the said HPSEB Ltd. had to construct a MVA,33/111 Sub- Station at Banuti. The said Board had applied to the Forest Department for the cutting of 26 trees of various classes and various species as well as 6 No. saplings of various species. The Forest

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Shimla Forest Circle, Shimla

Approved to [Signature]

department taking into consideration and the genuinity of the work, granted sanction for cutting of 26 trees of various class and various species as well as 6 No. sapling of various species vide Chief Conservator of Forest Shimla Forest Circle vide its letter No. C-28-b-1265/Shimla/11027 dated 02.01.2018 copy annexed as and the rest of the land in Khasra No. 308 was named as 308/1. Copy of letter no C-28-B-1256/Shimla/11027 dated 02.01.2018 is annexed as Annexure R-II.

3. That it is submitted that the respondent had provided the plants of deodar and ornamental in Khasra No. 308 to the school Children for plantation, but the said portion is in possession of HPSEB Ltd. where MVA, 33/111 Sub-Station at Banuti exists presently.
4. That it is also submitted that the applicant could have brought the matter in the knowledge of Police and Forest Department at that point of time, when this incident occurred as alleged in the petition. But at this belated stage the allegation as leveled against Sh. Devinder Thakur are not maintainable. The applicant is misleading and misrepresenting this Hon'ble Tribunal by bringing concocted facts with personal motive and grudge. The forest department has been regularly visiting /inspecting the forest of its territorial jurisdiction area and no illicit felling has so far been reported. The applicant is presumed to have rivalry or revengeful motive with Sh.

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9

Devinder Thakur as alleged in the application. If the applicant was so keen about the environment, he could have informed the authority at that point of time when this incident is reported to have taken place.

5. That the complainant had simultaneously filed a CWPII, No. 24/2022 before the Hon'ble High Court of H.P for the same cause, which came to be decided on 25.07.2022 and the Hon'ble High Court has held that "the reply also records that the signatory of the complaint, treated as letter petition, in their statement recorded on 22.06.2022 have also disowned the compliant (the letter petition). In view of the reply filed by respondent No. 4, we do not deem it proper to continue further with this letter petition. The Petition is accordingly closed & disposed off as such. Pending application, if any, also stand disposed off".

Prayer

It is therefore, respectfully prayed that in view of submission made in the foregoing para, the present application has no merit and being devoid of merit the present original application may please be dismissed as Hon'ble High Court of H.P. has already adjudicated, decided and disposed off the matter . The contents of the CWPII no. 24/22 are same to that of the present OA no. 266/22. The present application deserves to be dismissed in the interest of justice and fair play.

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Respondent
Conservator of Forests.
Shimla Forest Circle, Shimla

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A. No. 266 OF 2022

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.....Petitioner

Versus

State of Himachal Pradesh & Ors

...Respondents

AFFIDAVIT

I, Vasant Kiran B, IFS S/o Shri V. Surya Rao aged 44 years, presently posted as Conservator of Forests Shimla Circle do hereby solemnly affirm and declare as under:-

1. That the accompanying reply to the OA has been drafted at my instance and under my instructions being competent to do so on behalf of respondent.

2. That the contents of para 1-8 of preliminary submission and para 1 to 5 of reply on merits are true and correct to the best of my knowledge and belief as derived from official record.

That I above named deponent do hereby solemnly affirm and verify that the contents of this affidavit of mine from para 1-2 are true and correct. No part of it is false and nothing material has been concealed therein.

Verified at Shimla on this 18th day of March, 2023.

All Charges and Corrections are duly checked by me.

18-3-23 Oath Commissioner

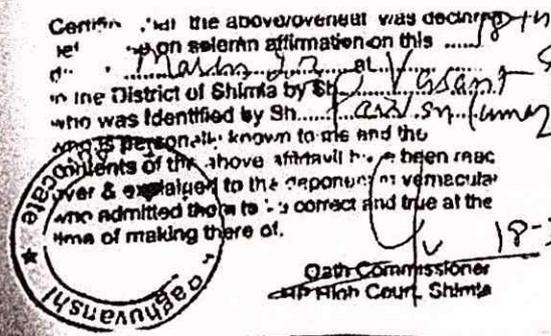
CONDEPONENT Conservator of Forests Shimla Forest Circle, Shimla

Oath Commissioner HP High Court, Shimla

Identified by

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OATH COMMISSIONER



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उद्योग

श्री. नरायण दास पुत्र स्क्. भी माठू राठ गांव बरूही
डा. घ. शैली तै. व नि. शिमला हि. प्र. का स्थायी
निवासी हूँ।

माननीय उच्च न्यायालय को मैं अचित
करना चाहता हूँ कि आपके न्यायालय की प्र. संख्या
CWPIL No.- 24/2022 के अंतर्गत जो शिकायत
द्वारा नहीं की गई
वह शिकायत मेरे द्वारा उक्त शिकायत
की गई है और न ही मेरे द्वारा उक्त शिकायत
प्र. सं. मेरे हस्ताक्षर है। वस मेरा यही ध्यान
है।

गवाह

राजकुमार ठाकुर

- ① राजकुमार ठाकुर
गांव बरूही पो. मां
कोही तहसील शिमला

- ② Ronal

Ronal Kumar
Vill Dhandhal P.O ROURI
Teh Shimla

- ③ Manu

Roshan Lal
Vill Labolag.
P.O Kandi, V. & Talu
Distt Shimla.

हस्ताक्षर

नरायण दास

नरायण दास
पुत्र स्क्. भी माठू राठ
गांव बरूही डा. घ.
शैली तै व नि.
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Subd. Gr. I
CCF Shimla Circle

Annexure - R-11 (12)

No. C-28-b-1265/Shimla/ 1/027
H.P. Forest Department.

Dated Shimla, the 2-1-2018

From: CCF Shimla. To: DFO Shimla

Subject: Permission for cutting/ removal of standing trees in Kh. No. 308 up Mohal Banuti, Tehsil and District Shimla HP for the C/O 2x3.15 MVA, 33/111 Sub Station at Banuti- online application No. SHI/1/2017-2018.

Memo.

Please refer to your office memo. No. 7922 dated 22.12.2017 on the subject cited above.

As per the instructions contained in the GoHP letter No. FFE-(B)53/2006-1 dated 20.08.2011 and as per recommendation/ request made by you vide reference quoted above, necessary permission to fell Chil-V/5, IV/6, III/5, IIA/2, Sappling-6, Deodar-V/4, III/2, Kail-V/1 & IV/1 standing upon Kh. No. 308 Mohal Banuti i.e. on the Government non- forest land belonging to HPSEB Ltd., which for the construction of 2x3.15 MVA, 33/111 Sub Station at Banuti, is hereby accorded. However, these ^{trees are} belongs to nationalised spps., therefore, please ensure the removal of such trees through HPSFDC Ltd.

[Signature]
Chief Conservator of Forests
Shimla Forest Circle, Shimla.
26/12/17

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Supdt. Gr. I
O/o CCF Shimla Circle