

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

Original Application No. 124 of 2017

IN THE MATTER OF:

SARV JAN KALYAN SEWA SAMITI ...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

**REPLY ON BEHALF OF THE RESPONDENT NO. 3
TO THE OBJECTIONS OF THE APPLICANT FILED
ON 20.12.2019**

MOST RESPECTFULLY SHOWETH:

1. That in the above titled matter, the objections have been filed by the applicant Samiti vide which it has raised a contention that the inspection report dated 28-08-2018 is liable to be rejected, vide which the demarcation of the land under the possession of Respondent No. 4 had been conducted and a prayer has been made to allow the applicant Samiti to enter the premises of the Respondent No. 4 for

carrying out a fresh demarcation and inspection on its own with respect to the contended encroached forest land as comprised in Khasra Nos.152, 153 and 161.

At the outset, it is humbly submitted that no inspection report dated 28.08.2018 has been filed on record. Therefore, it is humbly submitted that objections may kindly be dismissed on this score alone.

2. It is humbly submitted that the prayer made by the applicant Sarv Jan Kalyan Sewa Samiti is wholly misconceived and something beyond the competence of the applicant. By no stretch of imagination can it be said that a non statutory body or society or NGO can fill in the shoes of a government agency to conduct an exercise which the said society is not legitimately authorized to do so and hence the present objections are wholly misconceived and is liable to be dismissed.
3. That it is humbly submitted that site in question was inspected on 11.09.2018 by the Committee

constituted by this Hon'ble Tribunal vide order dated 27.08.2018. As per the joint inspection report dated 11.09.2018 filed on 26.09.2018, the representative of the applicant namely Sh.Vinod Kumar was also present. The said report concluded that alleged encroachment detected is 5530 sq. yards (3459 Sq. Yards in Khasra no. 152 and 2071 Sq. Yards in Khasra No. 153). After filing of this report, no objection was filed by the applicant, however, during course of hearing on 10.10.2018 time was sought on behalf of Respondent No.4 to file response to report. It is submitted that during course of hearing on 30.10.2018, no objection was raised on behalf of applicant. It is further submitted that during course of hearing on 05.12.2018, no objection was raised on behalf of applicant w.r.t. joint inspection report of the Committee. Objection was raised only to proposal of the respondent no.4 which is under consideration of the Ministry of Environment, Forest & Climate Change.

4. That it is submitted that the proceedings of demarcation/measurement are to be conducted by

revenue authorities duly having expertise/knowledge of the revenue record. There is a specific mode and procedure laid down by the law as to how the proceedings of demarcation are to be conducted. The demarcation proceedings had been conducted as per the standard operating procedure, by the Revenue Authorities concerned with the aid of the machine in the presence of the stake holders in the present application.

5. That on the submission of the inspection report, the Respondent Number 4 has voluntarily withdrawn its possession from an area measuring around 3200 square Yards out of the said land by shifting its boundaries. On the balance 2330 square yards falling entirely in Khasra number 152, various types of constructions exist including electricity substation and access path for the movement of fire engines.
6. That in so far as the area in question i.e. 2330 square yards (0.1929 Hectares) which stood allotted to the respondent no.4 is concerned, it is being brought to the kind notice of this Hon'ble Tribunal

that a proposal of the respondent no. 4 for diversion of this portion is pending for approval before the Government of India.

7. The matter was brought before the Ministry Of Environment Forest and Climate Change for the diversion of 0.1929 Hectares of forest land in favour of respondent no. 4 falling in Khasra Number 152 in revenue state of Village Jharsa, Tehsil and District Gurugram, for regularization under law. It is submitted that as per the provisions enshrined in Section 2 of the Forest Conservation Act, 1980, the user agency can divert forest land for non forest purposes and the section provides for the diversion of the forest land. Keeping in view the provisions so enshrined in Section 2 coupled with the other provisions of the Forest Conservation Act, 1980, the Central Government has granted Stage-1 permission for diversion of forest land for non forestry purpose The Government of India through its Ministry of Environment Forest and Climate Change through its letter vide reference no. 9-HRB105/2019-CHA

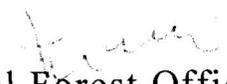
dated October 31, 2019 has granted the approval for the diversion of the said area of land falling under Khasra Number 152, under the terms and conditions in the paragraph 3 of the said letter. The copy of the said letter bearing reference no. 9-HRB105/2019-CHA dated October 31, 2019 is annexed as **Annexure R/1**.

8. That the applicant has contended in the objections that there is no provision of law under which the Respondent No. 4 could be given liberty to exchange its private land with forest land without the prior approval of the Central Government and further that allowing such kind of practice would set a wrong precedent and would lead to increase in encroachment of Forest lands. It is submitted that this particular case is singular and noteworthy. The part of land in question was erroneously transferred by the HUDA to the Respondent No. 4, of which upon notice, the major part of the land was immediately left by voluntarily withdrawing its possession over the same and shifting back its boundaries. However, some part could not be

handed over by the respondent No. 4 due to serious issues of construction including the access to the paths for fire engines, electricity sub-station and others. Accordingly the procedure laid down by law is being adhered to by the authorities and requisite permission of the Central Government in this regard is being sought.

9. That each rejoinder filed by the applicant and objection to previous reports mention about the Khasra No.152 and 153 only. Accordingly, reports and submissions have been submitted. In view of the factual submissions made herein, the reply of the respondent no. 3 to objections of the applicant may be taken on record.

The directions passed by this Hon'ble Tribunal shall be complied with.


Divisional Forest Officer,
Gurugram
On behalf of Respondent No. 3

VERIFICATION

Verified that the contents of the above Reply are derived from the records of the case maintained by the Forest Department, Government of Haryana and the legal submissions are based on advice. Verified further that nothing material has been concealed therein.


Divisional Forest Officer,
Gurugram
On behalf of Respondent No. 3

Date:
Place:



भारत सरकार
GOVERNMENT OF INDIA

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय

MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE

उत्तर क्षेत्रीय कार्यालय, चंडीगढ़ / Northern Regional Office, Chandigarh



F.No. - 9-HRB105/2019-CHA

दिनांक: 21-October-2019

संज्ञा में,

अतिरिक्त मुख्य सचिव (वन),
हरियाणा सरकार,
हरियाणा सिविल सचिवालय,
नण्डीगढ़।

विषय: Diversion of 0.1929 ha (Jharsa Bandh) of forest land in favour of Global Health Private Limited falling in Khasra No. 152 in revenue estate of village Jharsa, Tehsil and District Gurugram for regularization under law, on being erroneously transferred by HUDA, under the direction of all competent authorities given in meeting dated 17.05.2019, under forest division and District Gurugram, Haryana. (Online proposal No. FP/HR/Approach/41638/2019)-regarding.

संदर्भ:- प्रधान मुख्य वन संरक्षक (FCA) के पत्र संख्या प्रशा-डी-तीन-9032/2852 दिनांक 17.10.2019

महोदय,

कृपया उपर्युक्त विषय से संबंधित पत्र का अवलोकन करें जिसमें वन (संरक्षण) अधिनियम, 1980 की धारा-2 के अधीन अनुमति मांगी गई है।

2. राज्य सरकार के प्रस्ताव का ध्यानपूर्वक अध्ययन करने के पश्चात उपर्युक्त विषय हेतु 0.1929 हेक्टेयर वन भूमि के उपयोग के लिए सैधातिक स्वीकृति निम्नलिखित शर्तों को पूरी करने पर प्रदान की जाती है।

- i. प्रयोक्ता एजेंसी से CA स्कीम as per latest norms के अनुसार प्रतिपूर्ति पंधारोपण की राशि जमा करवाई जाये
- ii. As violation is reported by State Government, a penalty as per Guidelines 1.21 (ii) is imposed, which inter-alia stipulates "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 deposit is made".
- iii. माननीय उच्चतम न्यायालय के आदेश दिनांक 30.10.2002, 28.03.2008, 24.04.2008 एवं 09.05.2008 तथा पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार, नई दिल्ली के निर्देश संख्या 5-3/2007-FC दिनांक 05.02.2009 के अनुसार प्रयोक्ता एजेंसी से प्रस्तावित वन भूमि की नैट प्रजेंट वैल्यू जमा करवाई जाये।
- iv. प्रयोक्ता एजेंसी भुगतान राशि पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय की वेबसाइट www.parivesh.nic.in पर केवल ऑनलाइन माध्यम से जमा करवाएगी।
- v. User agency should ensure that the compensatory levies (CA cost, NPV, etc.) are deposited through challan generated online on web portal and deposited in appropriate bank only. Amount deposited through other mode will not be accepted as compliance of the Stage-I clearance.
- vi. Justification for locating the project in forest land to be submitted.
- vii. Status of court case pending in district Faridabad to be submitted.
- viii. Hardcopy of DGPS map of CA site to be submitted.

- ix. NOC from Town & Country Planning to be submitted.
 - x. Status of EC to be submitted.
 - xi. FRA Certificate of competent authority to be submitted.
3. अन्तिम स्वीकृति के उपरान्त निम्नलिखित शर्तों का पालन भी किया जायेगा।
- i. वन भूमि की विधिक परिस्थिति बदली नहीं जाएगी।
 - ii. प्रस्ताव के अनुसार कोई भी वृक्ष नहीं काटा जाएगा।
 - iii. वन भूमि का प्रयोग प्रस्ताव में दर्शाये गये उद्देश्य के अलावा किसी अन्य उद्देश्य के लिये नहीं किया जायेगा।
 - iv. साथ लगते वन और वन भूमि को किसी तरह का कोई नुकसान नहीं पहुंचाया जायेगा और साथ लगते हुए वन और वन भूमि को बचाने के लिये सभी प्रयत्न किये जायेंगे।
 - v. जब कभी भी NPV की राशि बढ़ाई जायेगी तो उस बड़ी हुई NPV की राशि को जमा करने के लिए प्रयोक्ता एजेंसी बाध्य होगी।
 - vi. स्थानान्तरण के लिए प्रस्तावित वन भूमि को केंद्रीय सरकार की पूर्व अनुमति के बिना किसी भी परिस्थिति में किसी अन्य एजेंसी, विभाग या व्यक्ति विशेष को हस्तांतरित नहीं किया जायेगा।
 - vii. केंद्रीय सरकार की अनुमति के बिना प्रस्ताव की ले आउट प्लान को बदला नहीं जायेगा।
 - viii. स्थानान्तरित वन भूमि की सीमायें आगे तथा पीछे लिखे गये क्रम संख्या वाले 4 फीट ऊंचे सीमेंट के खम्बों द्वारा चिह्नित की जाएगी।
 - ix. यदि आवश्यक हो तो प्रयोक्ता एजेंसी पर्यावरण सुरक्षा (अधिनियम, 1986 के अनुसार पर्यावरण अनुमति प्राप्त करेगी।
 - x. कूड़ा कंकट निपटान वन विभाग द्वारा जारी योजना के अनुसार किया जायेगा।
 - xi. अन्य कोई भी शर्त इस क्षेत्रीय कार्यालय द्वारा वन तथा वन्य जीवों के संरक्षण, सुरक्षा तथा विकास हेतु समय - समय पर लगाई जा सकती है।
 - xii. यदि कोई अन्य सम्बंधित अधिनियम/अनुच्छेद/नियम/न्यायालय आदेश/अनुदेश आदि इस प्रस्ताव पर लागू होते हैं तो उनके अधीन जरूरी अनुमति लेना राज्य सरकार की जिम्मेवारी होगी।
4. उपरोक्त पैरा 2-के अधीन शर्तों की अनुपालना रिपोर्ट प्राप्त होने के उपरान्त, वन संरक्षण अधिनियम, 1980 की धारा 2-के अधीन अन्तिम स्वीकृति के लिये प्रस्ताव पर विचार किया जायेगा। केंद्रीय सरकार की अन्तिम अनुमति दिये जाने तक वन भूमि का उपयोग नहीं किया जायेगा।

भवदीय,



(सी०डी० सिंह) 31/11/09

उप परम महासिदेशा (फैट्रीप)

प्रतिलिपि:-

1. अपर वन महानिदेशक (वन), पर्यावरण परिवर्तन जलवायु एवं वन, मंत्रालय, इन्दिरा पर्यावरण भवन, जोर बाग, अलीगंज, नई दिल्ली।
2. PCCF (HoFF), Forest Department, Government of Haryana, C-18, Van Bhawan, Sector-6, Panchkula, Haryana.
3. Divisional Forest Officer and Forest Division Gurugram, Haryana.
4. Global Health Private Limited, E-18, Defence Colony, New Delhi.