

236

IN THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

INDEX

IN

ORIGINAL APPLICATION NO. 518 OF 2022

IN THE MATTER OF:

Vivek Verma

..... Applicant

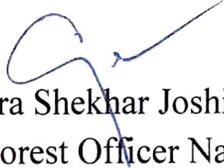
Versus

State of Uttarakhand & others.

..... Respondent

S.NO.	PARTICULARS	PAGE NOS.
1	Index	1
2	Affidavit	2-27
3	<u>Annexure No. 1-</u> The report of tree planting along with photographs.	28-29

Date: 21-11-2023


(Chandra Shekhar Joshi)
Divisional Forest Officer Nainital,
Applicant/Deponent

IN THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

ORIGINAL APPLICATION NO. 518 OF 2022

IN THE MATTER OF:

Vivek Verma

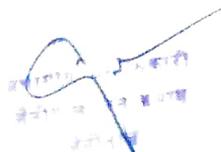
..... Applicant

Versus

1. State of Uttarakhand through Chief Secretary, Government of Uttarakhand.
2. Principal Secretary, Department of Environment and Forest, Government of Uttarakhand.
3. Principal Secretary, Urban Development, Government of Uttarakhand.
4. Divisional Commissioner, Kumaon.
5. Principal Chief Conservator of Forests (HoFF), Government of Uttarakhand.
6. Commissioner, Municipal Corporation, Nainital,
7. Uttarakhand pollution Control Board..... Respondents

**Affidavit on behalf of Divisional Forest Officer,
Nainital Forest Division, Nainital in compliance of
order dated 22-08-2023, passed by this Hon'ble
Tribunal in instant original Application.**

I, Chandra Shekhar Joshi Aged about 42 years, S/o Sri Prayag Dutt Joshi, Presently posted as, Divisional Forest Officer, Nainital



Forest Division Nainital, Uttarakhand do hereby solemnly affirm on oath and state as under:

- 1- That in my abovementioned official capacity, I am acquainted with facts and circumstances of the present matter. It is also relevant to mention here that the deponent is not impleaded as respondent in instant Original Application. The deponent is filling this Affidavit in compliance of order dated 22-08-2023 passed by Hon'ble Tribunal in instant Original Application.
- 2- I state that I have read and understood the contents of the said Application and its annexures and in reply thereto I state as under:

BRIEF FACTS

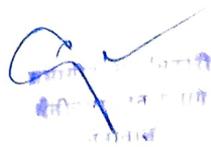
- 3- That Mr. Vivek Verma S/o of Late Shri Madan Mohan Lal Verma resident of H. No. 191, Bada Bazaar Mallital, Nainital has sent the present letter petition, which is treated and registered as original application, complaining about unauthorized cutting of trees in Forest area adjacent to Nainital city during the last few years.
- 4- That the instant Original Application was listed before this Hon'ble Tribunal on 01-09-2022 and this Hon'ble Tribunal was pleased and passed the order dated 01-09-2022 in instant matter. The operative part of order dated 01-09-2022 is being quoted as under-

3. Prima facie, the allegations made in the application raise questions relating to environment arising out of the implementation of the enactments specified in Schedule I to the National Green Tribunal Act, 2010. In view of the

प्रजासत्ताक अन्तर्गत विकास
विभाग
नैनीताल

allegations made in the application, we consider it appropriate that a Joint Committee be constituted to verify the factual position and take remedial action. Accordingly, we constitute a Joint Committee comprising of representatives of Principal Chief Conservator of Forests (HoFF), Government of Uttarakhand, State PCB and Divisional Commissioner, Kumaon Division and direct the same to meet within two weeks, undertake visits to the site, look into the grievances of the applicant, associate the applicant, verify the factual position and take appropriate remedial action after following due process of law and submit its Factual and Action Taken Report within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF. The State PCB will be the nodal agency for coordination and compliance.

- 5- That in compliance of order dated 01-09-2022 passed by this Hon'ble Tribunal in instant Original Application Dr. D.K. Joshi, Regional Officer, Pollution Control Board, Haldwani, Mr. Jeewan Singh Naganyal, Additional Commissioner Kumaon, Nainital and Mr. Maan Singh, Conservator of Forest, South Kumaon Circle, Uttarakhand, Nainital conducted Joint Inspection on the areas on 23-09-2022. The Regional Officer, Pollution Control Board, Haldwani, Uttarakhand by letter dated 20-10-2022 communicated the joint inspection report to Member Secretary, Pollution Control Board, Uttarakhand, Dehradun.



6- That the instant Original Application was listed before this Hon'ble Tribunal on 24-11-22 and this Hon'ble Tribunal was pleased and passed the order dated 24-11-2022 in instant matter. The operative part of order dated 24-11-2022 is being quoted as under-

3. *In compliance thereof, Dr. Rajendra Singh, ASO, Uttarakhand PCB has sent report of the Joint Committee vide email dated 31.10.2022.*

4. *In view of the averments in the application and observations in the report of the Joint Committee, we consider it appropriate to have response of (1) State of Uttarakhand through Chief Secretary, Government of Uttarakhand, (2) Principal Secretary, Department of Environment and Forest, Government of Uttarakhand, (3) Principal Secretary, Urban Development, Government of Uttarakhand, (4) Divisional Commissioner, Kumaon, (5) Principal Chief Conservator of Forests (HoFF), Government of Uttarakhand (6) Commissioner, Municipal Corporation, Nainital, and (7) Uttarakhand PCB who stand impleaded as respondents No. 1 to 7. The Registry is directed to prepare and attach memo of parties to the application. Respondent No. 7 is already appearing before this Tribunal. Notices be issued to respondents no. 1 to 6.*

5. *Reply/response by the respondents be filed by email within one month at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.*

प्रकाशिका विभाग
कीर्तिनाथ, नन प्रयाग
कीर्तिनाथ

241

6. *In view of the significant nature and impact of the environmental violations involved, we also consider it appropriate to have the assistance of some Senior Advocate as amicus curie to assist this Tribunal in just and fair adjudication of the questions involved. Accordingly, Mr. Akash Vashishtha, Advocate is appointed as amicus curie to assist this Tribunal in just and fair adjudication of the questions involved.*

7- That the instant Original Application was again listed before this Hon'ble Tribunal on 03-02-2023 and this Hon'ble Tribunal was pleased and passed the order dated 03-02-2023 in instant matter. The operative part of order dated 03-02-2023 is being quoted as under-

3. Replies/response have been filed on behalf of the Respondent No. 6 vide email dated 23.12.2023 and Respondent No. 7 vide email dated 30.01.2023.

4. Ld. AAG for Respondents No. 1 to 5 seeks time to file replies/response on their behalf. Learned Amicus Curie also seeks time to submit his report.

8- That the instant Original Application was again listed before this Hon'ble Tribunal on 03-05-2023 and this Hon'ble Tribunal was pleased and passed the order dated 03-05-2023 in instant matter. The operative part of order dated 03-05-2023 is being quoted as under-

10. Mr. Chandershekhar Joshi, DFO, Nainital has appeared through VC and we have interacted with him.



 नेशनल ग्रीन ट्रिब्यूनल
 नैनीताल

11. The DFO, Nainital is directed to file affidavit specifically mentioning the present status/latest position in respect of all incidents of illegal felling of trees reported by the Joint Committee. In his affidavit DFO, Nainital shall also mention about feasibility and tentative costs of geo-tagging of old trees in Nainital particularly Deodar and Oak trees.

12. In his reply respondent no. 5-PCCF (HoF) shall specifically mention the steps taken for setting up of Grievance Redressal Cell in compliance with the recommendation made by the Joint Committee in its report dated 31.10.2022. We are of the considered view that such Grievance Redressal Cell must have (i) a Control Room with dedicated Hot-line/web-portal where any Member of the Public should be able to make a complaint regarding illegal felling of trees and (ii) a quick response team for taking prompt action in case of receipt of any such complaint regarding illegal felling of trees to prevent illegal felling of trees and to ensure immediate seizure of illegally cut trees along with vehicles and equipment's used and arrest and prosecution of the offenders.

13. List for further consideration on 22.08.2023.

14. In view of the facts and circumstance of the case, we consider personal appearance of the DFO, Nainital, Regional Officer, UKSPCB and officer not below the rank of SDM duly authorised by the District Magistrate, Nainital before this Tribunal physically on the next date of

सुप्रीम न्यायालय
नैनीताल
उत्तरांचल प्रदेश
भारत

hearing to be essential for assisting this Tribunal in just and proper adjudication of the questions involved in the case and they are accordingly directed to remain present before this Tribunal on that date.

9- That as per the joint inspection report dated 23-09-2022 prepared by Dr. D.K. Joshi, Regional Officer, Pollution Control Board, Haldwani, Mr. Jeewan Singh Naganyal, Additional Commissioner Kumoan, Nainital and Mr. Maan Singh, Conservator of Forest, South Kumoan Circle, Uttarakhand, Nainital and submitted to Hon'ble Tribunal by Dr. Rajendra Singh, ASO, Uttarakhand Pollution Control Board, Uttarakhand before this Hon'ble Tribunal there are Six matters of illegal felling of Trees in the areas. The matter are as under-

- i) Illegal felling of Trees near Aroma Hotel, Nainital, District Nainital.
- ii) Illegal felling of Trees near Dhampur Band/Modi Bhawan, Nainital.
- iii) Illegal felling of Trees near Tifin Top lands and Kilburry Road, Nainital.
- iv) Illegal felling of Trees near in Sukhatal Car Parking area, Nainital.
- v) Illegal felling of Trees near Snowdan Compound, Nainital.
- vi) Illegal felling of Trees near Holy Angel, School, Nainital.

10- That the three member's joint inspection committee made some suggestion and recommendation regarding the prevention of

सहायक निदेशक
नैनीताल वन प्रभाग
नैनीताल
सनातन
सनातन

illegal felling of trees in Nainital area. The committee specially recommended to setting up of Grievance Redressal Cell for this area. This Hon'ble Tribunal vide order dated 03-05-2023 directed Respondent No. 5 Principal Chief Conservator of Forest (HoFF), Uttarakhand, Dehradun to take steps for this purpose.

- 11- That as per the direction issued by Hon'ble Tribunal the Nainital Forest Division, Nainital has already constituted a quick response team for the disposal of complaints received from public. A Forester, a Forest Guard and 06 outsourcing employees has been included in the team. The department is acting as per the complaints received from Public as per need.
- 12- That as per the Paragraph no. 11 of order dated 03-05-2023 the status report/latest position of all incident illegal felling of trees is being reported as under-
- i) **Illegal felling of Trees near Aroma Hotel, Nainital, District Nainital-** There were 08 trees of different species and diameter class. In this matter Range Case No. 4 /Nagar Palika/2022-23 was registered on 12.04.2022 against Unknown persons under section 32/33 of Indian Forest Act-1927 with Municipal Bye-laws. Mrs. Mamta Chand, Range Officer, Naina was appointed as enquiry officer in the matter by order dated 13-04-2022 of Divisional Forest Officer, Nainital Forest Division, Nainital. The enquiry officer submitted a report on 15-09-2022 in instant matter. The enquiry officer in her report mentioned that the land in question where 08 trees were fall down was a Nazool land and Municipal Committee Nainital has ownership on said land. The enquiry officer found that the said matter is not concerned under Section-

245

32/33 of Indian Forest Act-1927. It was found that the offence is covered under Section-4/10 of Uttar Pradesh Tree Protection Act-1976 with Municipal Bye-laws-1916 of Nainital Municipal Committee, which is still enforcing in State of Uttarakhand. It is relevant to mention here that the Section-16 of Tree Protection Act provides that offences are reportable by certain officers. In instant matter no accused was detected. All the recovered wood was on the spot and nobody claimed on the wood. It is necessary to mention here that as per Section-22 of Uttar Pradesh Tree Protection Act-1976 the provisions of the Act are in addition and not overriding. The owner of trees has a duty to file complain against the loss of 08 trees which were illegally cut down but no person has lodge First Information Report in the matter. The enquiry officer recommended further enquiry in the matter and matter is still under investigation and till the date no accused was detected in the matter. Therefore the matter is still pending the Forest Officers are trying to detect the actual accused in the matter. The committee has recommended that Municipal Committee Nainital should take action against the felling of trees in Nazool Land the matter is also communicated to Executive Officer, Nagar Palika Nainital for further action under Indian Penal Code-1860.

- ii) **Illegal felling of Trees near Dhampur Band/Modi Bhawan, Nainital-** There were 07 Surai trees (*Cupressus torulosa*) was damaged by unknown person on 02-04-2022. In this connection Range Case No. 02/Nagar Palika/2022-23 was registered under Municipal Bye-laws-1916 of Municipal Committee, Nainital. The case was investigated by Forest Officers and it was found that

246

Aparajit Singh Jaimwal S/o Divyashish Jaimwal, R/o Gandhi Nagar, Jammu has taken the responsibility of Girdling of 07 Surai trees (Cupressus torulosa) in private land. The fine of Rupees-1,00,000.00/- (Rupees One Lakh) was recovered through E-3 No. 27046 dated 11-04-2022 from the offender. The money was deposited in relevant Revenue Head of Government of Uttarakhand by Chalan No. 02/Nagar Palika/2022-23 in April 2022. The case has been compounded by the department. It is also relevant to mention here that all 07 Surai trees (Cupressus torulosa) are still standing on the land. The Forest Department further treated the trees with the help of Moss Grass. The trees are fit and there is no further damage reported regarding these trees. The said position has been reported by three members committee constituted by this Hon'ble Tribunal by vide order dated 01-09-2022. The status of the case is similar as reported and the trees has been treated by the department.

- iii) Illegal felling of Trees near Tifin Top lands and Kilburry Road, Nainital-** The three members of joint inspection committee found 02 poles of 0-10 diameter class which were felled two years ago in Tifin Top area and no felling was found in Kilburry Road region. The three members committee did not report any other illegal felling of trees in the area. Hence no action is required at this point of time.
- iv) Illegal felling of Trees near in Sukhatal Car Parking area, Nainital-** The three members joint inspection committee found that there 17 trees of Poplar were cut down in Sukhatal Car Parking area of District Nainital. The committee also informed to

247

this Hon'ble Tribunal that the user agency Kumaon Mandal Vikas Nigam (KMVN), Nainital had applied for the permission of felling of these 16 Poplar trees for the construction of Car Parking area for the development of tourism in Nainital. These trees were not cut down illegally. The Divisional Forest Officer, Nainital Forest Division, Nainital vide letter no. 5436/31-1 dated 26-05-2022 granted felling permission for these trees. The permission letter dated 26-05-2022 was annexed with the report of three members joint inspection committee report dated 23-09-2022 as annexer-6. Hence in this matter no tree was cut down illegally. The Divisional Forest Officer, Nainital Forest Division, Nainital granted permission for of these trees with accordance to law.

v) **Illegal felling of Trees near Snowdan Compound, Nainital-**

The tree member's joint inspection committee reported 09 trees of different species were cut down in private land without any permission of competent authority in this regard Range Case No. 05/Nagar Palika/2022-23 was registered for only one Kharsu Tree of 20-30 diameter class. The investigation of offence was handover to Forester Nagar Palika Range, Nainital. In the investigation of offence it was found that 09 trees of different species were cut down on private land. The offence was converted under Section-4/10 of Uttar Pradesh Tree Protection Act-1976. The actual offender of said offence was detected by investigation officer. Rupees 1,00,000/- was recovered from the offender. The money has been deposited to appropriate Revenue Head of Government of Uttarakhand. The Forest offence case no. 05/Nagar Palika/2022-23 has been compound by the Revision Authority, Conservator of Forest, South Kumaon Circle,

संयोजक एवं निदेशक
नैनीताल नगर प्रशासन
नैनीताल

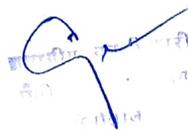
248

Uttarakhand Nainital under Section-15 of Uttar Pradesh Tree Protection Act-1976. The case has been compounded by the department and no further action is required now.

- vi) **Illegal felling of Trees near Holy Angel, School, Nainital-** The tree member's joint inspection committee reported 11 trees of different species were cut down in private land without any permission of competent authority in this regard Range Case No. 34/Nagar Palika/2021-22 was registered Mr. Manoj Kumar, Care Taker, Holy Angel School, Nainital. The said land was Private Land & case was registered only for the violation of Municipal Bye-laws-1916 of Municipal Committee, Nainital. It was found that the case was not compounded by Competent Authority and it was reopened for investigation. The investigation of Forest offence was handover to Forester Nagar Palika Range, Nainital. In the investigation of Forest offence it was found that 11 trees of different species were cut down on private land. The Registered Range Case was converted under Section-4/10 of Uttar Pradesh Tree Protection Act-1976. The actual offender of said Case was detected by investigation officer. Rupees 50,000/- recovered from the offender. The money has been deposited to appropriate Revenue Head of Government of Uttarakhand. The Range Case no. 34/Nagar Palika/2021-22 has been compounded by the Revision Authority, Conservator of Forest, South Kumaon Circle, Uttarakhand Nainital under Section-15 of Uttar Pradesh Tree Protection Act-1976. Earlier only 05 thousands was deposited by the offender now 45 thousands additional amount has been deposited in the matter. Total 50,000/- Rupees has been recovered from the law violators. No further action is required in the matter.

Uttarakhand
Nainital
Nainital

- 13- That the Hon'ble Tribunal directed mention about feasibility and tentative costs of geo-tagging of old trees in Nainital particularly Deodar and Oak trees. In compliance of order dated 03.05.2023 the deponent has directed to Forest Range Officer, Nagar Palika, Range Nainital to do needful in the matter. The forest Range Officer Nagar Palika, Range Nainital directed to all concerned staff to count the Devdar and Oak trees present in Private, Government and Nazool land which is outside of Reserve and Protected Forests of Nagar Palika Range of Nainital Forest Division, Nainital. After the counting of trees it was found that 2339 Devdar trees, 11943 Banj Oak trees, 3010 Kharsu trees and 7412 Tilonj trees found in Nagar Palika Range Nainital outside the Reserve and Protected forests. It is relevant to mention here that Kharshu and Tilonj are the species of Oak specially found in hill areas.
- 14- That after counting of trees in Private, government and Nazool Land (Outside the Reserve and Protected Forest of Nagar Palika Range of Nainital Forest Division, Nainital) the Forest Range Officer, Nagar Palika Range Nainital vide letter dated 06.06.2023 invited proposal and estimated cost regarding geo-tagging of old trees in Nainital from Ms Oriental Trails, Ms Visual design, Ms Design 360 and Ms Shri Ulka Foundations.
- 15- That as per the proposal obtained from different firms the Geo Tagging is useful for monitoring of important forest species. It is also useful in Enhanced Forest Management, Biodiversity Conservation, Forest Fire Management, Research and Data Analysis etc. It is also relevant to mention here that the said area



251

of searchable PDF/OCR Support PDF and not in the form of Image PDF. The action taken report shall include, preventing discharge of sewage into drains leading to Naini lake, collection, processing and disposal of solid waste and status be furnished in quantifiable terms and removing and preventing encroachments on drains and other places causing traffic congestion.

4. List the matter for further consideration on 28.11.2023.”

**ACTION TAKEN REPORT ON BEHALF OF DIVISIONAL
FOREST OFFICER, NAINITAL FOREST DIVISION,
NAINITAL IN COMPLIANCE OF ORDER DATED 22-08-
2023 PASSED BY THIS HON'BLE TRIBUNAL**

19- That the State of Uttar Pradesh provided an Act for regulation of felling of Trees and Replanting of Trees in Rural and Hill areas of Uttar Pradesh namely The Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976 (U.P. Act No. 44 of 1976). As per the provisions of Section-2 of Original Act-1976 the Act is not applicable in certain areas. Section-2 of Original Act is being quoted as under-

2. *Act not to apply to certain areas. - This Act shall not apply to-*
- a. *Trees situate in reserved and protected forests.*
 - b. *Trees situate in a forest or forest land in respect of which any notification under the Indian Forest Act, 1927 as amended in its application to Uttar Pradesh is in force.*
 - c. *Trees situate in urban areas.*
 - d. *Trees situate in a Government garden or on land held by the Government.*

20- That the Section-4 of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976 (U.P. Act No. 44 of 1976) provides Restriction on felling and removal of trees in private land. The Section-4 of said Act is being quoted as under-

4. Restriction on felling and removal of trees. - Except as provided in this Act or the rules made thereunder, no person shall-

- a) Fell any tree standing on any land, whether included in a holding or not.*
- b) Cut, remove or otherwise dispose of any tree other than a tree which is completely dead and has fallen without the aid of human agency on any such land.*

21- That the Section-10 of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976 (U.P. Act No. 44 of 1976) provides provisions for penalty for felling or removal of trees in contravention of Section-4. The Section-10 of said Act is being quoted as under-

10. Penalty for felling or removal of trees in contravention of Section 4. - Whoever fells or causes to be felled any standing tree, or cuts, removes or otherwise disposes of any fallen tree, in contravention of the provisions of Section 4, or contravenes any condition of any permission granted under this Act, shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

22- That the Section -15 of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976 (U.P. Act No. 44 of 1976) provides provisions for Power to compound offence under this Act. The Section-15 of said Act is being quoted as under-

253

15. *Power to compound offences. –*

(1) *The State Government may by notification authorise any officers to accept any person against whom there is reason to believe that he has committed offence under this Act in respect of any tree other than a tree situated in a forest, grove or public premises, such sum of money not exceeding Rs. 5,000 by way of composition for the offence which such person is suspected to have committed.*

(2) *On the payment of such sum of money to any such officer, the suspected person if in custody shall be released and no further proceedings under this Act shall be taken against such person and notwithstanding anything contained in Section 14, such officer may on payment of such amount, not exceeding five thousand rupees as he may in the circumstances of the case think fit, release the property seized under this Act.*

23- That the ownership of trees situated in Private land belongs to the land holder. The trees cut down by the owner of private land are forest produce but it is not the property of State Government. The State Govt. has only empowers the Forest Officers to grant permission under Section-5 of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976. If a person cuts or removes any tree from his own land then he commits a Forest offence of Section-4/10 of said Act. The offence under Section-4/10 is compoundable under Section-15 of said Act. In the instant matters the Forest offences were registered against the land holder for cutting or removing the trees in their own land without obtaining permission

from Competent Authority/Divisional Forest Officer. The said offences were compounded by Conservator of Forest, South Kumaoun Circle, Uttarakhand, Nainital under Section -15 of said Act.

- 24- That it is necessary to mention here it's a forest offences registered under Section-4/10 of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976 and if it is compounded by the Competent Authority/Conservator of Forest then as per provisions of Section-15(2) no further proceedings under this Act shall be taken against such person and notwithstanding anything contained in Section 14, such officer may on payment of such amount, not exceeding five thousand rupees as he may in the circumstances of the case think fit, release the property seized under this Act.
- 25- That the Hon'ble Tribunal vide order dated 22-08-2023, directed the Forest Department to take Action for realization of Cost of Tree not according to the value but according to the parameter to be punitive and to initiate prosecution according to the Rules. It is necessary to mention here that after taking payment for compounding the offence the forest department is not empowered by law to initiate prosecution according to the said Act namely Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976.
- 26- That it is necessary to mention here that the Range Case No. 02/Nagar Palika/2022-23, which was registered for the damaging of 07 Surai Trees was compound by the department by taking Rs. 01,00,000.00/- only (One Lakh Rupees). The trees are still standing on said land. The Forest Department further treated the trees with the help of Moss grass. Hence there is no felling



recorded and therefore it is not possible to initiate prosecution in the matter after compounding the matter under Section-15(2) of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976.

- 27- That it is necessary to mention here that the joint committee constituted by this Hon'ble Tribunal by its order dated 01-09-2022 did not found any felling in Tifin Top lands and Kilburry Road, Nainital. Therefore no Forest offence was registered there and no Action is required under provisions of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976.
- 28- That the three members of joint committee found that 17 trees of Poplar were cut down near Sukhatal Car Parking area, Nainital. The joint committee also reported that the Divisional Forest Officer, Nainital Forest Division, Nainital vide letter no. 5436/31-1 dated 26-05-2022 granted permission for felling of these trees. The user agency Kumaoun Mandal Vikas Nigam (KMVN), Nainital obtained the permission of these trees under Section-5 of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976. Hence no Forest offence is required to register against any person and there is no Forest offence committed under Section-4/10 of said Act. Therefore the department is not able to initiate any kind of prosecution against said Rules.
- 29- That the Range Case No. 05/Nagar Palika/2022-23 was registered against the felling of 09 trees near Snowdan Compound Nainital, compound by the department by taking Rs. 01,00,000.00/- only (One Lakh Rupees). It is not possible to initiate prosecution in the matter after compounding the matter under Section-15(2) of Uttar Pradesh Protection of Trees in Rural & Hill areas Act-1976.

256

30- That the tree member's joint inspection committee reported 11 trees of different species were cut down in private land without any permission of competent authority in this regard Range Case No. 34/Nagar Palika/2021-22 was registered Mr. Manoj Kumar, Care Taker, Holy Angel School, Nainital. The said land was Private Land & case was registered only for the violation of Municipal Bye-laws-1916 of Municipal Committee, Nainital. It was found that the case was not compounded by Competent Authority and it was reopened for investigation. The investigation of Forest offence was handover to Forester Nagar Palika Range, Nainital. In the investigation of Forest offence it was found that 11 trees of different species were cut down on private land. The Registered Range Case was converted under Section-4/10 of Uttar Pradesh Tree Protection Act-1976. The case of was compounded by Competent Authority/Conservator of Forest under Section-15 of said Act. It is necessary to mention here that after receiving the money from offender no further action can be taken by the department under provisions of Secion-15(2) of said Act.

31- That the details of cases in the matters reported by three members joint inspection committee is as under-

Date of Offences	Name of Accuse	No. of tree felled illegally	Money received from the offenders under Secion-15(1)	Present Status of Case	Status of Prosecution	Remarks
12-04-2022	unknown	8	-	Under investigation	-	No offender has been

257

						identified in the offence
02-04-2022	Aparajit Singh S/o Divyash Jaimwal, R/o Gandhi Nagar, Jammu	7 Surai trees damaged while no trees was cut down	01,00,000.00-/ One Lakh Rupees	Compounded by Department	Prosecution is barred under 15(2) of Uttar Pradesh Tree Protection Act-1976	Trees are treated with the help of Moss Grass and still standing on land.
23-09-2022	-	-	-	-	-	No tree was found cut down by inspection committee
26-05-2022	-	17 Poplar	-	-	-	The trees were cut down with the permission of Divisional Forest Officer, Nainital Forest Division, Nainital. Therefore no case was

						registere d and no prosecuti on is required.
22-04- 2022	Vinod Sabrawa I S/o Sunil Sabrawa I, Snowda n Compou nd Mallital, Nainital	07	01,00,000. 00-/ One Lakh Rupees	Compoun ded by Departme nt	Prosecuti on is barred under 15(2) of Uttar Pradesh Tree Protectio n Act- 1976	-
02-11- 2021	Manoj Kumar Care taker Holy Angel School, Near Arvind Ashram, Mallital, Nainital.	11	50,000.00/ - (Fifty Thousands only)	Compoun ded by Departme nt	Prosecuti on is barred under 15(2) of Uttar Pradesh Tree Protectio n Act- 1976	-

32- That the Conservator of Forest is a Competent Authority to issue Schedule of Rates of Trees within the Forest Circle. The Conservator of Forest, South Kumaun Circle, Uttarakhand, Nainital vide order no. 01/8-1(3) dated 01-05-2018 revised the Schedule of Rates for South Kumaun Circle, Uttarakhand, Nainital. As per the Rates of Trees the valuation of Trees felled in instant matter was calculated as under-

259

No. of Incident	No. of Trees felled illegally	Valuation of Trees as per Standing order	Remarks
i) Illegal felling of Trees near Aroma Hotel, Nainital, District Nainital.	08	3,225	No money is recovered by the department
ii) Illegal felling of Trees near Dhampur Band/Modi Bhawan, Nainital.	-	11,860	Trees are still standing on the land. 07 Trees were damaged by the offenders. Rupees 01,00,000/- was recovered as compounding amount.
iii) Illegal felling of Trees near Tifin Top lands and Kilburry Road, Nainital.	-	-	No Tree was felled there.
iv) Illegal felling of Trees near in Sukhatal Car Parking area, Nainital.	-	-	All 17 Poplar Trees were cut down by the permission of Divisional Forest Officer, Nainital.



 नैनीताल

260

v) Illegal felling of Trees near Snowdan Compound, Nainital.	9	2,629	Rupees 01,00,000 was recovered as compounding amount.
vi) Illegal felling of Trees near Holy Angel, School, Nainital.	11	300	Rupees 50,000 was recovered as compounding amount.
Total	28	18,014	Total Rupees 02,50,000/- was recovered in the matters

33- That it is necessary to mention here that the three members committee recorded total 45 trees fell down in Nainital during their inspection. Out of 45 trees 17 Poplar Trees were cut down by proper permission under U.P. Tree Protection Act-1976. Only 28 Trees were cut down illegally in above matters. In compliance of order dated 22-08-2023, the Forest department has already planted 350 trees in Narayan Nagar, Nagar Palika Range, Nainital which are more than 10 times of the trees illegally felled in different incident reported by three Members of Joint Inspection Committee, Constituted by Hon'ble Tribunal. The report of tree planting along with photographs is being annexed herein and marked as **Annexure No. 01** of this Affidavit.



261

- 34- That it is necessary to mention here that Uttarakhand is a hill state and also very sensitive in respect of Forest Fire. The Forest Fire fighting is a hard task for the forest officers. The villagers and the citizen help the department to control the forest fire occurs between March to June. The offences under Uttar Pradesh Tree Protection Act are bailable and compoundable. The trees do not belong to Government. These offences are not under category of commercial felling. The department has already imposed heavy fine against law violators.
- 35- That in above matters the trees belongs to the private person/land holders. The Govt. of Uttarakhand has no ownership on these trees. The Forest Department cannot charge the value of these trees which are the property of private persons. It is also necessary to mention here that the most of cases has been compounded by Competent Authority/Conservator of Forest, South Kumaun Circle, Nainital.
- 36- That it is also necessary to mention here that every year Forest Department plans large number of trees in Nainital Region during plantation season. This year 250 trees were also planted during Van Mahotsav in Nainital in presence of Hon'ble Chief Justice, High Court, Uttarakhand, Nainital, others Hon'ble Judges and Advocates. Students of different Schools & Colleges were also invited to plant trees in Nagar Palika Range, Nainital during the plantation season. It is necessary to mention here that the State of Uttarakhand also celebrates Harela Mahotsav during July to August and more than 700 trees were planted during this season with Public Participation. The Nagar Palika Range also planted


 कारी
 प्रवाह
 नैनीताल

262

5500 Trees of different species under Bahuddeishya Varaksha Ropan Yojana.

37- That it is also relevant to mention here that the illegal felling of trees in Nainital Region is not commercial felling as reported by Three Members of Joint Inspection Committee, Constituted by Hon'ble Tribunal.

38- That as per the order dated 22-08-2023, Mr. Rajkumar, Sub-Divisional Forest Officer, Nainital Forest Division, Nainital who was present in last hearing has been directed to present before the Hon'ble Tribunal on next date of hearing/ listing i.e. 28-11-2023.


 DEPONENT
 डी.डी.एस. वन विभाग
 नैनीताल

VERIFICATION

I, the deponent above named do hereby verify and say that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there from. The legal submissions are further true as per legal advice received and believed to be true and correct.

Verified by me at Nainital, Uttarakhand on this day of 21, November, 2023.


 DEPONENT
 डी.डी.एस. वन विभाग
 नैनीताल


 डी.डी.एस. वन विभाग
 नैनीताल

263



कार्यालय वन क्षेत्राधिकारी, नगरपालिका वन क्षेत्र नैनीताल (नै0व0प्र0नै0) ।

पत्रांक 153 / 29-1 दिनांक, नैनीताल

20/10 2023 ।

वा में

प्रभागीय वनाधिकारी,
नैनीताल वन प्रभाग
नैनीताल।

षय-

माननीय राष्ट्रीय हरित प्राधिकरण, नई दिल्ली में योजित वाद संख्या-ओ0ए0-518/2022, विवेक वर्मा बनाम उत्तराखण्ड राज्य व अन्य में पारित आदेश दिनांक 22.08.2023 के अनुपालन के सम्बन्ध में।

न्दर्भ-

आपकी पत्र सं0 2440/29.3(3) दिनांक 04.10.2023 एवं उप प्राव0नै0 की पत्र सं0 99/29.3(3) दिनांक 09.10.2023 ।

होदय,

उपर्युक्त सन्दर्भित विषय के क्रम में उक्त वाद में माननीय राष्ट्रीय हरित प्राधिकरण, नई दिल्ली द्वारा गठित तीन सदस्यी समिति की संयुक्त निरीक्षण आख्या में वर्णित समस्त प्रकरणों में अवैध रूप से पातित कुल वृक्षों की संख्या 28 है जिसके सापेक्ष नगरपालिका राजि नैनीताल के नारायण नगर बीट के कक्ष सं0 20 (N-29° 22' 55.33" E-079° 25' 51.95" H-1852) में विभिन्न प्रजातियों की 350 पौध रोपित की गयी है जो अवैध रूप से पातित वृक्षों की संख्या के दस गुना अधिक है। रोपित पौध की सूची निम्न प्रकार है-

क्र0सं0	पौध की प्रजाति	संख्या	क्र0सं0	पौध की प्रजाति	संख्या
1	पुतली	20	6	काकिस	60
2	तुंगला	40	7	अखरोट	30
3	सुरई	100	8	पांगर	10
4	ऑंगा	60	9	देवदार	10
5	बाँज	10	10	पदम	10
				कुल	350

अतः सूचना महोदय की सेवा में आवश्यक कार्यवाही हेतु प्रेषित है।

भवदीय
वन क्षेत्राधिकारी

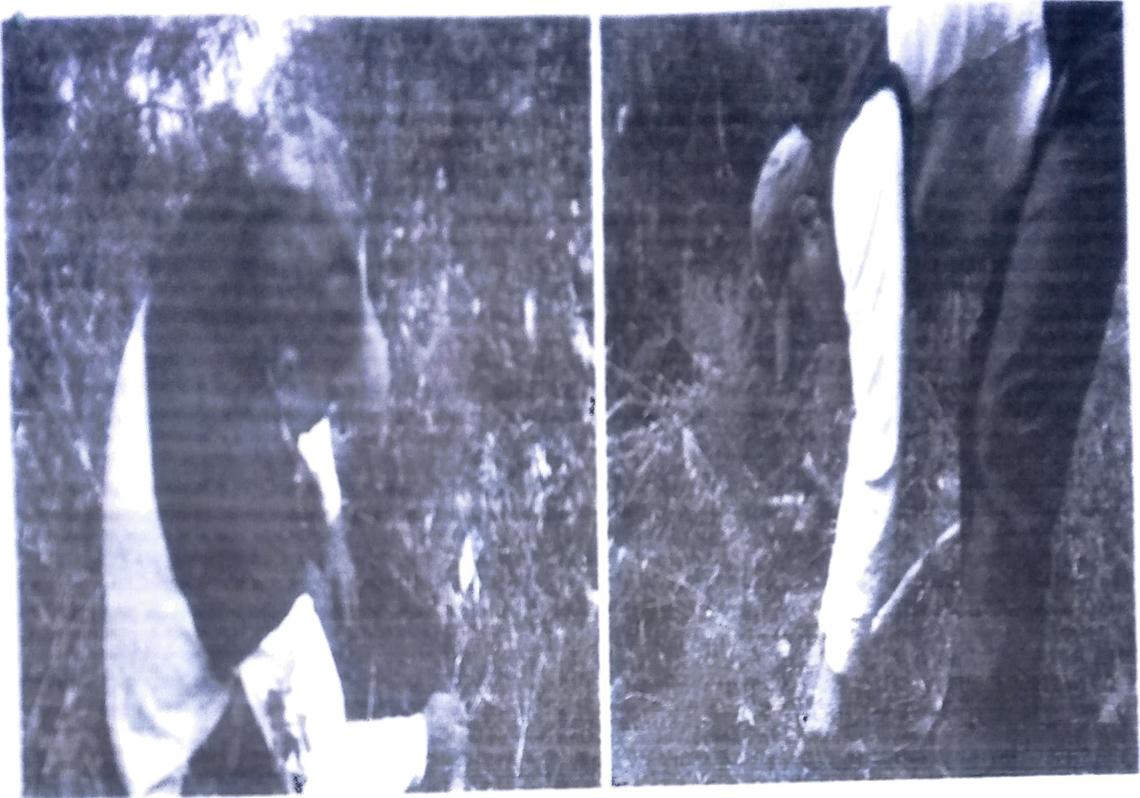
नगरपालिका वन क्षेत्र, नैनीताल

शंक

उक्तदिनांकित ।

तिलिफि- ॐ प्रभागीय वनाधिकारी नैनीताल, नैनीताल वन प्रभाग नैनीताल को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

वन क्षेत्राधिकारी
नगरपालिका वन क्षेत्र, नैनीताल।



[Handwritten Signature]
 वन क्षेत्राधिकारी
 नगरपालिका वन क्षेत्र
 मनीताल वन प्रभाग, मनीताल

[Handwritten Signature]
 वन क्षेत्राधिकारी
 मनीताल वन प्रभाग