

Haryana Forest Department
Office of Chief Conservator of Forest, South Circle,
Forest Complex , Near Court, Gurugram, Tel. 0124-2320981
Email: cf.gurgaon@gmail.com

No.: 237

Dated: 24.04.2023

To,

Registrar General,
National Green Tribunal,
New Delhi.

Sub.: Written Statement of Smt. Vasvi Tyagi, IFS, Chief Conservator of Forests, South Circle, Haryana Forest Department, Gurugram on behalf of Respondent No. 3, 9 and 10 in OA No. 881 /2022 titled as Rajinder Krishan Sharma Vs. Union of India & others.

As per directions of Hon'ble National Green Tribunal in O.A No. 881/2022 titled as Rajinder Krishan Sharma Vs Union of India & Ors. in the latest order dated 13.03.2023 has directed as under:-

"6. Replies/response by the above said respondents be filed within six weeks by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.

In compliance of the orders of Hon'ble National Green Tribunal, the State Government of Haryana vide Memo No. 1268-Ft-1-2023/2494 dated 21.04.2023 has conveyed to the Principal Chief Conservator of Forests (HoFF), Haryana to direct Chief Conservator of Forest (South) Gurugram to file the reply in above matter. Accordingly, the present reply is being filed by the undersigned by e-mail at judicial-ngt@gov.in.

Enclosure: As above.


Chief Conservator of Forests,
South Circle, Gurugram.

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 881 OF 2022**

RAJINDER KRISHAN SHARMA, IFS(RETD) & ANR

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

INDEX

Sr. No.	Particulars	Date	Page
1.	Written Statement of Vasvi Tyagi, Chief Conservator of Forests (South), Gurugram, Respondent No. 10 for and on behalf of Respondent No. 3, 9 and 10.	25/04/2023	2-25
2.	Annexure R-1- Copy of Conservator of Forests (FC) U.C Note.	08.10.2015	26-29
3.	Annexure R-2 - Copy of U.C. Note of DCF, Gurgaon and action taken thereon.	3.11.2015	30-48
4.	Annexure R-3- Copy of representations made by M/s Ambiance developers and infrastructure Pvt Ltd. and action thereon, including advice of office of A.G. Haryana.	--	49-98

Place:- Gurugram

Dated:- 25/04/2023


(Vasvi Tyagi)

Chief Conservator of Forests (South),
Gurugram

BEFORE THE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH,
NEW DELHI
ORIGINAL APPLICATION NO. 881 OF 2022

RAJINDER KRISHAN SHARMA, IFS(RETD) & ANR

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

Written Statement of Vasvi Tyagi , Chief Conservator of Forests (South), Gurugram Respondent No. 10 (on behalf of Respondent No. 3, 9 and 10).

RESPECTFULLY SHOWETH:-

Preliminary Submissions: -

1. That, the Applicant in the present OA has alleged that the commercial building project of Respondent No 8./Ambiance Island Lagoon apartments through Raj Singh Gehlot owned Ambience Developers and Infrastructure Pvt Limited and Respondent No.5 /HUDA is illegal and contrary to the provision of inter-alia Environment Protection Act,1986, Indian Forest Act 1927 and Forest Conservation Act. It is alleged by the applicant that the Government of Haryana decision to order withdrawal of prosecution case against Sh. Raj Singh Gehlot from Special Environment Court, Faridabad is without legal merit and is against the facts of the case. The applicant has alleged that the order of Government of Haryana (to withdraw case) is illegal, irregular and based on unsubstantiated facts and based on extraneous considerations other than legal or administrative. The applicant had also submitted that act of Respondent No.9, PCCF, Haryana in respect of the aforesaid offence relating to violation of Nathupur Bundh and Nahthupur Drain are not legally commendable and Forest offences are increasing due to callous attitude of the authorities.
2. That, It is submitted that actions of forest officials were bonafide and based on the facts before them. The then DFO had acted as per the facts available

to him and in the case of issuance of damage report for encroachment/construction on the Protected Forest land of Nathupur Bundh (DR 29065 dated 14.05.2008) and launch of prosecution against Sh. Raj Singh Gehlot, Director, Ambience Island Lagoon Apartments, Gurgaon in Special Environment Court, Faridabad. The DFO Gurugram, had relied on the facts that

- i. That the Sikandarpur Nathupur Bandh was notified as protected forest u/s 29 of Indian Forest Act vide notification number S.O.251/C.A.16/27/S.29/81 dated 2nd December 1981.
 - ii. Satellite images of the land in question in year 2000 clearly shows that Sikandarpur -Nathupur as a continuous linear feature with linear array of trees on both sides. The longitudinal section of the Bundh as obtained from the Irrigation Department reveals that the total length of this Bundh is 9500 feet which is 2.895 km and this is further corroborated by the measurement of 2.87 km based upon satellite imagery.
 - iii. Superimposition of geo-reference sajra onto the satellite imagery clearly reveals that the Bundh is passing through the Khasra number 531,533 and 535, and the fact that this land is also part of the land on which Ambience Laguna apartment now stands constructed highlighted the destruction of a stretch of Protected Forest.
 - iv. Further, time tagged imageries of the site in question clearly reveal the presence of Bundh/Protected Forest during the year 2000/2002 and the exact geo space is being occupied by constructed buildings. This clearly and photographically establishes the physical fact of violation of IFA, 1927, be it in whichever Khasra number.
 - v. DFO, Gurugram also relied on letter number 1109 dated 27.04.1992 issued by DTP, Gurgaon which clearly states the existence of a Bundh in the area pertaining to license number 19 of 18.98 acre i.e. the present area.
3. That, the then PCCF had decided the representation of M/s Ambience Developers and Infrastructure Pvt. Ltd. vide his office letter no. NT/D-III-6381/4344 dated 16.10.15 based on the facts before him. Purely on the basis of facts before him it was concluded that land bearing khasra no. 526, 533,

534, 535 and 536 are not forest land and therefore cancelled both DR no. 29065 dated 14.05.2008 and FCA case no. FP/HR/Others/13983/2015 and DFO Gurugram was directed to withdraw the prosecution case No. 7G/08-09 from Special Environment Court, Faridabad.

4. M/s Ambience Developers and Infrastructure Pvt. Ltd submitted a representation alleging that their project did not cover the land under the Nathupur Bund Protected Forest vide Government of Haryana Notification No. S.O. 71/C.A.16/ 27/S.29/85 dated 05-07-1985, the then PCCF was duty bound to decide upon the representation based on the facts. The fact relied upon by the PCCF before issuing letter no. NT/D-III-6381/4344 dated 16.10.2015 are listed and analyzed in details in the file noting (Pg 50-53 of the O.A.) The then PCCF office letter no. NT/D-III-6381/4344 dated 16.10.2015 directing for cancellation of both DR no. 29065 dated 14.05.2008 and FCA case no. FP/HR/Others/13983/2015 as the land in question was deemed as non-forest land and outside the purview of Forest Laws and further direction to DFO Gurugram for withdrawal of the prosecution case was fair, reasonable, lawful and an act in good faith aimed at not causing injustice, hardship and undue harassment of a private citizen through unwarranted litigation as there was no cause of action. This was not an exercise of arbitrary discretion.
5. The representation given by M/s Ambience Developers and Infrastructure Private Limited vide letter dated 14.09.2015 was examined in the office of PCCF. Haryana. Conservator of Forests (Forest Conservation), at that time dealt matters related to Forest Conservation who dealt the representation and submitted his observations in his noting dated 08.10.2015 (Annexure R-1). Thereunder the following observation was made

“In light of the analysis of the records, the khasra numbers of land owned by the M/s Ambience Developer and Infrastructure Private Limited does not form part of the Nathupur bundh in the revenue village Nathupur and therefore are not Protected Forest (PF) and as such Forest Conservation Act 1980 is not applicable and the damage report issued for violation of IFA is not applicable. There seems to be an error of judgment on part of the forest officials in issuing damage report and filing of prosecution case in the Environment Court, Faridabad, but, was however done in the interest of the Forest Department for protection of forest and discharge of its official duty.

Accordingly, the damage report (DR) no. 29065 dated 14.05.2008 issued against Mr Raj Singh Gehlot may be canceled and prosecution case no 7G/08-09 may be withdrawn with the permission of the Hon'ble Environment Court, Faridabad.

The FCA case FP/HR/others/13983 2015 submitted by M/S Ambience Developers and Infrastructure Private Limited may be allowed to be withdrawn since no forest land is involved”

6. For reaching the aforementioned conclusion, the Conservator of Forests (Forest Conservation) relied on the following facts of the case

- i. The Nathupur bundh forest land is recorded in the Forest record of Gurgaon Forest Division as under:
Sikandarpur Nathupur Bundh: 0-8 RD; 2.51 Km long; 30 ft wide; Area 2.26 Hectare.
- ii. That the irrigation department had written to DFO, Gurgaon vide letter dated 27.08.2002 to give permission for abandonment and leveling of the bundh in question and for issuance of certificate that the bundh in question does not fall in the category of Reserve Forest and NOC to this effect be issued. DFO, Gurgaon wrote to the Conservator of Forests, Gurgaon vide letter no 1117 dated 24.12.2002 to de-notify bundh area falling in Nathupur village which was owned by DLF and associate companies. Wherein CF Gurgaon further informed CCF (Protection) vide letter no 252 dated 06.05.2003 that the entire Nathupur Bundh falls in the revenue state of Nathupur village and as per revenue record is owned by private individuals. As per the report of CF, Gurgaon the length of bundh was 9500 feet (2.85 kilometer), width was 52 feet and area was calculated at 11.34 acre (4.59 hectare). It was observed that the length was comparable to the forest record (8.25 RD= 2.56 Km) but the width was recorded as 30 feet wide, because in the absence of precise record all Bundh's were considered as being 30 feet wide.
- iii. That the DLF had provided a list of Khasra numbers which was owned by private persons including DLF on which the bundh was located as per the information provided by the Irrigation Department measuring 4.32 hectares. the length of bundh was reported to be 9500 feet,

- iv. Thereafter, DLF applied for the diversion of certain forest land owned by DLF measuring 5.4 acre (2.2 hectare). It was noted by CF(FC) that forest land owned by individuals bearing following khasra number was not diverted and remained forest land viz. 405, 398, 392, 391, 389, 109, 91, 92, 150, 154, 158, 159,165.
- v. In the representation submitted by M/S Ambience Developer and Infrastructure Private Limited, the existence of Nathupur Bundh on the land owned by M/S Ambience Developer and Infrastructure Private Limited and its associate companies, which is recorded as a protected forest in forest records was denied.
- vi. M/S Ambience Developer and Infrastructure Private Limited had submitted a proposal for diversion of forest land being aggrieved by the filing of the prosecution case in the Environment Court. Therein under the proposal, M/S Ambience Developer and Infrastructure Private Limited had given the following details of the forest land for diversion: Length of bundh: 283 meters; width of bundh:15.85 mtr; khasra no. involved in the bundh: 526, 533, 534, 535 and 536; area of the bundh: 4486 sq. mtr.
- vii. It was noted by CF (FC) that a comparison of the khasra numbers provided by the Irrigation department to the then DFO, Gurgaon for permission of leveling Nathupur Bundh which was later recommended by the then Conservator of Forest has been done and it showed that the entire bundh measuring 2.85 Km with khasra details does not pass through khasra numbers and area owned by M/S Ambience Developers and Infrastructure Private Limited for their project named Ambience Islands. It was further concluded that proposal submitted by M/S Ambience Developer and Infrastructure Private Limited for diversion of a part of Nathupur bundh (Protected Forest) under FCA for area measuring 4486 sq. mtr. passing through khasra no. 526, 533, 534, 535 and 536 was thus for an area which does not find mention in the report of the Irrigation Department submitted in 2002 as being a part of Nathupur Bundh.
- viii. Based on the above facts, CF(FC) submitted that it appeared that the field staff of Gurgaon Forest Division had erred in identifying the location of the bundh due to non-availability of authentic land records to be made available by the owner department. The 8.25 RD long

Nathupur Bundh constructed and maintained by the Irrigation Department was treated as owned by the Irrigation Department and the area was notified by a general notification dated 03.05.1958 when all irrigation systems was notified as Protected Forest. It was further observed that this may have occurred on account of an error of judgment by the Gurgaon Forest Division in identifying the exact location of forests especially when clear identification pillars were not fixed on the ground.

7. That the DFO Gurgram had also acted in good faith and reiterated the facts of the case believed to be true and complete and vide letter dated 03-11-2015 sought review of the decision to cancel damage report and withdrawal of prosecution case. It is clear from the perusal of DFO letter dated 03-11-2015 that facts relied upon by the then DFO indicated that the land in question was forest land and M/s Ambience was in violation of forest laws and with motivation to protect the forest land as required by the Divisional Forest Office, the facts perceived to be complete and true were brought to the notice of PCCF and review/withdrawal of PCCF order dated 16.10.2015 was sought. (pg no. 1to 5 of Annexure R-2)
8. The PCCF, examined the issue afresh in light of submissions made by DFO, Gurugram. In the file noting dated 27.11.2015, APCCF (Forestry) remarked that “...As instructed by worthy PCCF, undersigned visited the location in Gurgaon. The bundh in question physically exists on both sides of building, which is bone of contention...”. It was decided that the file was to be referred for the advice/orders of the Ld. Advocate General, Haryana through the office of Principal Secretary, Forest. (pg no. 5-6 of Annexure R/5)
9. The Principal Secretary to Govt. of Haryana, Forest department was briefed about the facts of case and the contentions raised by then DFO, Gurugram with regard to the aforementioned letter dated 16.10.2015 of PCCF. It was informed that the satellite images of the land in question of the year 2000 clearly showed Sikanderpur-Nathupur Bundh as a continuous linear feature with linear array of trees on both sides. Superimposition of geo reference Sajra on to satellite image clearly revealed that the bundh passing through the land in question where construction had taken place in violation of forest laws. The reference was also made to letter number 1109 dated 27.04.1992 issued by DTP, Gurgaon which clearly stated the existence of a Bundh in the area pertaining to license number 19 of 18.98 acre i.e., the present area. It

was also brought to the notice that the aforementioned evidence had already been placed on record before the Hon'ble Punjab and Haryana High Court in CRM No. 34200 of 2012- Raj Singh Gehlot v. State of Haryana. The contentions of DFO, Gurugram were further corroborated by the observation of APCCF (Forestry) after the field inspection that the bundh in question physically exists on both sides of the buildings. After examination of aforementioned facts, PCCF submitted that land in question is forest land and the letter issued by the then PCCF dated 16.10.2015 is to be treated as non-est. It was further submitted that case for diversion of forest land under FCA, 1980 be revived and the case may be allowed to reach its logical conclusion. The Principal Secretary to Govt. of Haryana, Forest department concluded that wrong and unauthorized directions were issued by then PCCF to withdraw the prosecution case based on the insufficient facts and therefore recommended for cancellation of PCCF letter dated 16.10.2015. (pg no. 7 to 19 of Annexure R-2)

10. Thereafter, the Principal Secretary to Govt. of Haryana, Forest department vide memo no 4346-Ft-1-2015/649 dated 15-01-2016 directed the PCCF to withdraw the letter no. NT/D-III-6381/43-44 dated 16.10.15. In compliance of the above, the said letter was withdrawn vide letter no. Admin-D-3-6381/61-64 dated 19.01.2016.
11. Thereafter, M/s Ambiance developers and infrastructure Pvt Ltd submitted a representation dated 06.01.2016 for implementation of the orders of PCCF, Haryana dated 16.10.2015. Further, Ambiance developers and infrastructure Pvt Ltd submitted representations dated 16.05.2016 and 23.08.2016 in which it was requested that the government may process their request for diversion of 4486 sq. mtr. of their own land which was being claimed by the forest department as forest land for development of internal roads, services and others public amenities for development of the integrated township on 132.06 acres of land in terms of license granted by the Director General, Town & Country Planning (DGTCP), Haryana, Chandigarh. M/s Ambiance developers and infrastructure Pvt Ltd had submitted that the said land of 4486 sq. mtr. is: -
 - i. Completely owned by them since years and is duly registered and mutated in their name.
 - ii. Not and has never been owned by the Government.

- iii. No plantation of whatsoever nature has ever been done thereon and at present also there is no forest or plantation thereon.
- iv. Duly licensed by DGTCP, Haryana, Chandigarh after considering and verifying their ownership to the land.
- v. It is in the middle of the integrated township and diversion is required for development of road, services and amenities for the public use.

The company had further submitted that the company shall pay the compensation against the challan filed by the Forest Department before the Environment Court Faridabad, and for that Government of Haryana may kindly take a decision to withdraw the ongoing case no 7G/08-09 in the Special Environment Court, Faridabad. The company on its part shall withdraw CRM No. 34200 of 2012 pending adjudication before the Hon'ble Punjab and Haryana High Court, Chandigarh after which will facilitate the end of litigation with Forest Department

It was further submitted by the company that M/S Sara Estate Pvt Ltd and M/S Alankar Apartment Private Limited, group companies of M/S Ambience have also applied for issuance of clarification of Forest Department in respect of its land compromising Khasra Nos. 536, 537, 538, 541, 543, 544, 562, 563 and 564 total measuring 14 Bigha 5 Biswa and 2/3rd share in Khasra Nos. 539, 540, 542, 546, 561 total measuring 11 Bigha 19 Biswa and 7 Biswa, and Khasra Nos. 448, 449, 526 total measuring 11 Bigha and 12 Biswa, in the revenue state of village Nathupur, Tehsil & District Gurgaon, Haryana. Any of the above mentioned Khasra Nos. are not claimed to be the part of Nathupur Sikandarpur Bundh in damage report or in the challan filed by the Forest Department in the Environment Court, Faridabad as well as in this written statement filed by the DFO, Gurgaon in CRM number 34200 of 2012, before the Hon'ble Punjab and Haryana High Court, Chandigarh.

In the written statement filed in CRM 34200 of 2012 before Hon'ble Punjab and Haryana High Court, Chandigarh, the DFO Gurugram has stated that Khasra No. 531, 533, 535 are parts of Nathupur Sikandarpur Bundh relying upon geo-referenced map prepared on google satellite imageries of 2000 after superimposing with Sajra on which Ambience Lagoon Apartment has been constructed. However, M/S Ambience infrastructure and developers Pvt Ltd had also applied for diversion of 4486 Sq. meter forest land bearing Khasra Nos. 526, 533, 534, 535 and 536 under the forest

Conservation Act, 1980 thereby implying that this Khasra Nos. are forest land and provisions of FC Act are applicable. However, the company in its representation submitted that the land bearing Khasra Nos. 526, 533, 534, 535 and 536 are private land owned by the company and not a forest land. The company had further stated that it had applied for diversion of forest land under FCA, 1980 on the request of senior officers of the Forest Department to settle the long pending issue.

12. The representations made by M/s Ambiance developers and infrastructure Pvt Ltd were examined by the Deputy Secretary, Forests and Special Secretary, Forests and submissions regarding facts and records pertaining to the case were placed for perusal of Additional Chief Secretary, Forests Department. (pg no. of 1-26 of Annexure R-3)

13. The representations were also examined by the Additional Chief Secretary, Forest Department. Besides the facts of the case aforementioned above it was noted:-

- i. that the section 29 of Indian Forest Act, 1927 empowers State Government to issue protected forest notification and declare forest land or wasteland nor being a reserved forest but are property of the Govt. or over which Govt. has proprietary rights. Furthermore, no such notification shall be made unless the nature and extent of right of the Government and the private persons vis-s-vis the forest land or waste land comprises therein has been inquired into and recorded at a survey or settlement and the land to be notified as protected forest will not abridge or affect any existing rights of individuals or communities. In exercise of the powers conferred by section 29 of Indian Forest Act, 1927, the Government of Haryana issued Protected Forest Notification No.S.O.251/C.A.16/27/S.29/81 dated 02.12.1981 wherein the Nathupur Sikanderpur Bundh was notified as protected forest without conducting any survey or settlement as mandated by law as laid down under Section 27 of the Indian Forest Act, 1927. Before this notification by the Forest Department was issued the Department has neither received by request or communication from Irrigation Department to notify Nathupur Sikandarpur Bundh as Protected Forest nor the Forest Department has made any inter-departmental inquiry about the ownership of the land comprising of Nathupur Sekandarpur bundh. The Forest Department has taken a suo-

motto discretionary decision for the same and notified Nathupur Sikanderpur Bundh as Protected Forest.

- ii. For this administrative deficiencies as stated above the Forest Department does not mention the details of the land in the form of Khasara numbers from the revenue records as comprised of the Nathupur Sikanderpur Bundh and after the notification the Forest Department has neither taken the possession of the notified area nor proceeded with any kind of plantation on the land and moreover the Department is duty bound to get the entries recorded in Revenue record pertaining to the Protected Forest but have failed miserably in doing so and till date no entry pertaining to the Protected Forest over Nathupur Sikandarapur Bundh is found in the revenue records.
- iii. Since the issue of the Notification in 1981 till 2002 the forest Department could not claim any land comprised in the Nathupur Sikandcrpur Bundh due to the vagueness regarding the details of the Protected Forest and thereafter in the year 2002 Irrigation Department furnished a letter to DFO, Gurgaon wherein it was categorically stated that the land on which Nathupur Sikanderpur Bundh was constructed is not owned by Irrigation Department and rather is the property of private owners and the specific details vide Khasra No. on which the bundh was constructed were provided and the specific dimensions of the bundh was also mentioned in the letter by the Irrigation Department.
- iv. The Forest Department accepted the submission of the Irrigation Department as furnished in the letter of 2002 and though the land was not owned by Government hence the then DFO Gurgaon forwarded the proposal for de-notification of all the khasra numbers on the basis that all the khasra numbers are owned by private owners and private land cannot be notified as protected forest. The said proposal of De-notification was forwarded to the office of PCCF by the then Conservator Gurgaon and at the time of scrutiny of the proposal of de-notification the office of PCCF raised certain queries and in reply to the queries the then Conservator of Forest, Gurgaon admitted that the Nathupur Siknaderpur Bundh falls in the revenue estate of village of Nathupur and as per the revenue record it is the property of private owners and further clarified that Khasra Nos, length and breadth of

bundh are shown in Jamabandhi and were annexed alongwith letter of DFO dated 25.3.2003 and again recommended the de-notification proposal submitted by DFO, Gurgaon. It may also be noted that the Khasra Nos. as mentioned in the letter of the Irrigation Department and duly accepted by the Forest Department to be the part of Nathupur Sikanderpur Bundh did not include any of the khasra numbers owned by the Ambience Group of Companies.

- v. Regarding applicability of Hon'ble Supreme Court order dated 12.12.1996 in which it was held that "*The term "forest land", occurring in section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership*"; the then Additional Chief Secretary, Forests had observed that Govt. record means Revenue Record. If by mistake Forest Department notifies a farmer's field as protected forest and this field has never been under forest in the past and also no forest now (means no plant was ever planted or is planted) then Hon'ble Supreme Court order is not attracted on this particular piece of land.
- vi. It was further observed that
 - a) the Forest Department woke up and raised this issue after a gap of 15-16 years. The protected forest notification whereby the Nathupur-Sikanderpur Bundh was declared protected forest was issued on 2.12.1981 and as per the provisions of Section 67 of the India forest Act 1927 imprisonment or one year is prescribed for the violation of the Act and as per Section 468 of CrPC the cognizance of offence could be taken only within period of one year i.e. till 2.12.1982 rather in the present case the Forest Department has issued the damage report in the year 2008 and initiated the prosecution in Environment Court after a gap of 15-16 years which is highly time barred and therefore is un-understandable and unjustified.
 - b) The Khasra numbers supplied by the Irrigation Department regarding bundh do not match with the Khasra numbers given by the Ambience Developers, then a new development of Google Imageries has been introduced by DFO, Gurgaon. The

DFO Gurgaon supported by his seniors prepared a Geo-reference Sajra on Google imageries. The claim of DFO, Gurgaon on disputed land of Khasra No.531,533 and 535 being protected forest land on the basis of Satellite imagery of 2000 is inappropriate as the reliance placed on the same is out of the scope of the provisions of the Act. However, M/s Ambience Developers & Infrastructure Pvt. Ltd. vide its representation dated 23.08.2016 has rebutted the DFO's proposition of Google Imagery, wherein it has sought a scientific report from an NABL accredited Laboratory to ascertain the veracity of the claim of Google Satellite Imagery made by the Forest Department. The report of the M/s Vardan Enviro Net, NABL accredited EIA Consultant and NABL accredited and MoEF & CC recognized laboratory provided that from the observation of the Satellite Google Imagery 2000 of the Lagoon Apartment Complex, Ambience Island, NH-8, Gurgaon, the area as marked by the coordinates shows that no Bundh was in existence on the said land at that point in time. Moreover, it was also observed that DTCP, Haryana had issued license no. 19 of 1993 dated 09.07. 1993 to the builder for development of group housing. The builder got the building plan sanctioned in the year 1996 for development or group housing on the land comprising in Khasra No.3min north (0-12-0), 529 South West (1-16-0), 534(6-18-0), 530(0-4-0), 531(5-8-0), 532(0-8-0), 533(0-2-0), 535(1-15-0), 2/2/1 (0-8- 11) in the revenue estate of village Nathupur, Gurugram. Therefore, the group housing complex was completed in 2001 and the occupation certificate was issued by DTCP in 2001. Hence by virtue of the submissions above the contention of the DFO with respect to the google imagery of 2000 appears to be baseless without any scientific study as an imaginative exercise.

- c) The former PCCF, after examining the entire facts/records of the office passed an order for cancelling the damage report which has been rebutted by the DFO, Gurgaon and his senior officers including the present PCCF. It was noted that the note

prepared by then Conservator of Forests (Forest Conservation) in the office of PCCF, Haryana Panchkula had dealt with all aspect of the matter and it was considered opinion of ACS, Forest that in the note the then Conservator of Forests (Forest Conservation) had explained all the issues in detail and the order dated 16.10.2015 by the then PCCF Haryana was passed on merits. But the DFO, Gurgaon had placed the objections and moved a case for withdrawal of the order of the then PCCF dated 16.10.2015 to withdraw the order of the PCCF without considering the facts and merit of the case. DFO Gurgaon, Conservator of Forests Gurgaon and the new incumbent PCCF, have challenged the jurisdiction of the then PCCF regarding the withdrawal of the case, Whereas the then PCCF passed an order dated 16.10.2015 based on record and facts available in his office thereby making it clear that the land owned by Ambience Group of Companies is not part of Nathupur Sikanderpur Bundh which is notified as protected forest and when the land is not a forest land then the damage report issued against the Developer is not tenable. It was noted that by the then ACS, Forests that PCCF was fully empowered to issue any instruction on the issue under section 2.1 (vi) of Haryana Forest Manual and in the said order has exercised his power in a judicious manner and rectified the wrong done by a subordinate officer of the Department.

- d) it was also noted that that the DFO(T), Gurugaon prepared a damage report of an area totaling 0.6080 hectare against the Ambience Developers, whereas the total area of the bundh as per record is 2.2600 hectares and the DLF has already taken diversion of an area of 2.2000 hectares, meaning thereby the left out area of the bundh is 0.0600 hectare, leading to a conclusion that the damage report against the Ambience Developers is more than the area of the bundh left out which comes to 0.5480 hectare whereas the left out area of the bundh after DLF diversion area is only 0.0600 hectare hence on this ground also the claim of Forest Department is beyond parameters of the merit.

vii. The Additional Chief Secretary , Forest based on the above, sought the expert opinion of Ld. Advocate General, Haryana on the issues that

- a) Whether the order of PCCF dated 16.10.2015 be implemented? or
- b) Whether entire facts needs to be placed before the Hon 'ble High Court for a decision on merit and also to take cognizance of facts/sequence of events which led to this controversy and let the guilty be punished whosoever be?

(pg 26 to 33 of Annexure R-3)

14.The O/o Ld. Advocate General examined the facts of the case, file noting's and records and observed that

“...there is wide discrepancy in the records regarding the extent of the bandh.

The details of Sikanderpur-Nathupur bandh forest land as recorded in forest records of Gurgaon Forest Division are: 0 - 8.23 RD (2 .51 km long); 30 ft. wide; Area = 2.26 hectare. This is corroborated in the cartographic map of bandhs of Gurgaon Irrigation Division dating back to 22.12.1962 depicting length of Sikanderpur-Nathupur bandh as 8250 feet. The records of Irrigation department and the Forest department are old and original and thus the primary evidence qua the length, width, extent and area of the bandh.

It was also observed from the records available that CCF-(Protection), Haryana vide letter no. 252 dated 6.5.2003 informed that the entire Nathupur bandh falls in the revenue estate of Nathupur village and the length of this bandh is 9,500 feet (2.85 km) and width is 52 feet covering an area calculated to be 4.59 hectare. It also transpired that GIS (geographical information system) was adopted and relied by the forest department. It was observed that Sh. Prem Prashant, GIS Analyst in the O/o PCCF, Haryana has stated on record that the satellite data of that year 2000 is experimental in nature and may not be accurate and the geo-reference map prepared on Google imageries of the year 2000 after superimposing on the revenue shajra is likely to lead to substantial errors and thus may not be wholly reliable and may be termed as the secondary piece of evidence which is to be relied upon only in the absence of the primary evidence i.e. concerned record, maps, plans drawings etc. which is not the case here. Meaning

thereby, that when there is ambiguity with respect to the exact length, width and the area of the bandh then reliance must be placed on the primary and original source of record and averments of the Irrigation department which is responsible for the proposing, planning, construction and maintenance of all bandhs in the state including the Sikanderpur-Nathupur bandh.

It is evident enough that there are inconsistencies and discrepancies in the record with regard to the khasra nos., length, width and area of the bandh due only to fact that the modern methodology adopted is not absolutely fool-proof as stated by the GIS Analyst in the o/o PCCF. Further, in absence of any survey or settlement report of the location, before notifying it as a Protected Forest and also taking into consideration the submissions made by the Forest department itself that the Irrigation department is the custodian of the bandh and all the records are available with them, it can safely be presumed, on the basis of the averments of the Forest department in the reply filed in CRM 34200/2012, that the submissions made by the Irrigation department are to be relied upon in this case and the Irrigation department has categorically stated that the bandh never existed on the khasra nos. 531, 533 and 535. Hence, the damage report No. 29065 dated 14.05.2008 for violations under the Indian Forest Act, 1927 and Forest Conservation Act, 1980 may not be tenable in law as it is based on wrong notions.”

Based on the observation made above, the O/o Ld. Advocate General had given his opinion that:-

On the first issue, raised by the ACS(Forest) - Whether the order of PCCF dated 16.10.2015 be implemented?

It is opined that the order passed by the PCCF dated 16.10.2015 is cogent, well-reasoned and speaking order based on the facts brought before him and has also been placed on record before the Hon'ble High Court on 04.11.2015 and the Hon'ble Court passed the following order:

"Learned counsel for the petitioner submit that vide letter dated 16.10.2015 the damage report dated 14.05.2008 against the petitioner has been cancelled.

Whether forest authorities would likely to continue with the proceedings in the said circumstances would be a debatable issue.

Learned State counsel seeks time to confirm the said fact. Copy of the letter elated 16. 10.2015 is taken on record."

Thus, taking into account that the order dated 16.10.2015 has already

been taken on record by the Hon'ble High Court and also considering the fact and submission made herein above, the order of PCCF dated 16.10.2015 may be restored/revived and the subsequent order elated 19.01.2016 may be withdrawn.

On the second issue, whether the entire facts be placed before the Hon'ble High Court for decision on merits, it is opined that the order dated 16.10.2015 has already been placed on record before the Hon'ble High Court and the Court was pleased to make the following observation: -

"Whether the forest authorities would likely to continue with the proceedings in the said circumstances would be debatable issue"

Thus, in the light of the observations made by the Court and the facts the case, file noting's and records made available and in order to avoid unnecessary litigation as mandated by the para 14.1 State Litigation Policy-2010, it is opined that no purpose will be achieved if the matter is agitated any further. (pg no. 34 to 41 of Annexure R-3)

15. Relying on the opinion rendered by the O/o AG, Haryana; the Government of Haryana through office of Additional Chief Secretary vide letter no 4346-Ft-52015/4852 dated 31.03.2017 directed for restoration of letter no. NT/D-III-6381/4344 dated 16.10.15 and withdrawal of letter no Admin-D-3-6381/43-44 dated 19.01.2016. Accordingly, then PCCF vide Office Memorandum no. NT/D-III-6381/82-86 dated 12.04.2017 restored the letter no. NT/D-III-6381/43-44 dated 16.10.2015 and withdrew the letter no Admin-D-3-6381/61-64 dated 19.01.2016.
16. That all allegation made in the OA are denied and those may not be deemed admitted merely due to non-traverse thereof, unless submitted specifically.

Parawise Reply: -

- 1-6. That the contents of Para No. 1 to 6 of the Original Application are denied except those are matter of record.
7. That the contents of Para No. 7 of the Original Application are wrong and denied except those are matter of record. The contents of Preliminary Submissions may kindly be treated as part and parcel of the present para as those are not being repeated herein for the sake of brevity.
8. That the contents of Para No. 8 of the Original Application are admitted as they are matter of record. The Preliminary Submissions are being reiterated.

9. That the contents of Para No. 9 of the Original Application are based on the conjecture and surmises on part of applicant and denied by the answering Respondents. The Preliminary Submissions are being reiterated
10. That the contents of Para No. 10 of the Original Application are admitted to the extent those are matter of record.
11. That the contents of Para No. 11 of the Original Application are denied to except those are matter of record. It is submitted that FCA case no. (FP/HR/Others/13983/215) submitted by M/S Ambience Developers and Infrastructure Pvt Limited for diversion of forest land and the Damage Report (DR) No. 29065 dated 14.05.2008 issued for illegal construction and encroachment of Forest Land was cancelled as it was concluded that no forest land was involved. Therefore, it was logical that both the FCA proposal for diversion of forest land as well as DR for illegal construction and encroachment to be cancelled once it was concluded that no forest land was involved in the project even though project proponent may not have applied for the cancellation of offence report (DR). It is wrong and vehemently denied that the then PCCF, Haryana decided the representation given by M/S Ambience Developers and Infrastructure Pvt Limited dubiously and fraudulently in collusion with the accused as alleged. The O/o PCCF examined the representation and based on the facts and record pertaining to the case before him passed a reasoned speaking order vide PCCF office letter NT/D-III-6381/43-44 dated 16.10.2015. Further, for the sake of brevity, the preliminary submission made in para 5, 6 & 7 are reiterated in reply hereto.
- 12-14. That the contents of Para No. 12 to 14 are denied except those are matter of record. It is submitted that the then DFO Gurugram, directed by sense of duty to protect the forest land, reiterated the facts of the case as perceived to be true and complete by the DFO vide letter dated 13-11-2015 and sought review of the decision of the PCCF of cancelling of damage report and withdrawal of prosecution case.
- In view of submissions made by the DFO Gurugram, the then PCCF examined the issues afresh and the file was to be referred for the advice/orders of the Ld. Advocate General, Haryana through the office of Principal Secretary, Forest. The Principal Secretary to Govt. of Haryana, Forest department was briefed about the facts of case and the contentions raised by then DFO, Gurugram with regard to the aforementioned letter

dated 16.10.2015 of PCCF. After examination of the facts of the case, PCCF submitted that land in question is forest land and the letter issued by the then PCCF dated 16.10.2015 is to be treated as non-est. Subsequently, the Principal Secretary, Govt of Haryana, Forest Department vide memo no 4346-Ft-1-2015/649 dated 15-01-2016 directed the PCCF to withdraw the letter no. NT/D-III-6381/43-44 dated 16.10.2015. Contents of preliminary submissions in para 8-11 are reiterated in reply hereto.

15. That the contents of Para No. 15 of the Original Application are based on the conjecture and surmises on part of applicant and are denied by the answering respondent. The contents of Preliminary Submissions are being reiterated
16. That the contents of Para No. 16 are admitted to the extent those are matter of record. However, the averment made by applicant that Government of Haryana buckled under the pressure of accused is purely based on conjectures and surmises on part of the applicant and therefore wrong and vehemently denied. The decision of the Government of Haryana, vide Additional Chief Secretary, Forest Department letter no, 4346-FT-52015/4852 dated 31.03.2017 which directed the for restoration of letter no. NT/D-III-6381/4344 dated 16.10.2015 and withdrawal of letter no Admin-D-3-6381/43-44 dated 19.01.2016 was not under pressure. The representations by M/S Ambience Developers and Infrastructure Pvt Limited were examined and related records and facts of the case were thoroughly examined and It was concluded that PCCF letter dated 16.10.2015 was cogent, well-reasoned and speaking order based on the merits and facts of the case before him. Legal opinion from the office of Ld. Advocate General was also sought by the Government on whether the order of PCCF dated 16.10.2015 to be implemented or whether entire facts be placed before the Hon'ble High Court for decision on merits? Based on the legal opinion rendered by O/o Ld. Advocate General, the Government through Additional Chief Secretary, Forests decided to issue the directed the for restoration of PCCF letter no. NT/D-III-6381/4344 dated 16.10.2015 and withdrawal of letter no Admin-D-3-6381/43-44 dated 19.01.2016. It is further submitted that this was not an arbitrary exercise of power without application of mind but was decided with due consideration of the facts of the case and with following up of due administrative

procedures. Contents of Para no 12-15 of preliminary submissions are reiterated in reply hereto.

17. That the contents of Para No. 17 of the Original Application are admitted to the extent those are matter of record. The contents of Preliminary Submissions are being reiterated
18. That the contents of Para No. 18 are wrong and denied. It is wrong and denied that Government of Haryana decision to order withdrawal of the case against the accused. Mr Raj Singh Gehlot from Special Environmental Court, Faridabad is not commensurate with legal merit and facts of this case. It is wrong and denied that the orders of the Government of Haryana are illegal, irregular and based on unsubstantiated facts and is based on extraneous considerations other than legal or administrative. The administrative procedure adopted and the facts and legal merits of the case are submitted in Para No. 12-15 of the preliminary submissions. The averment made by applicant that the accused persons are very powerful and resourceful business entity having considerably high political and financial stakes and that the accused persons have violated the environmental obligations ruthlessly without fear of law and the law enforcement agencies baseless & illogical and are denied by the answering respondents.
19. That the contents of Para No. 19 of the Original Application are admitted to the extent they are matter of record. The contents of Preliminary Submissions are being reiterated
20. That the contents of Para No. 20 of the Original Application are admitted to the extent they are matter of record. However, It is wrong and vehemently denied that the DFO Gurugram requested the withdrawal of criminal case against Mr. KP Singh under extraneous considerations without any legal merit other than legal or administrative. The allegations made by the application in Para 20 of the O.A. are unrealistic & imaginary any substance or material evidence.
21. That the contents of Para No 21 of Original Application are regarding the bonafide of the Applicant needs no reply from the respondent. However, there is no cause of action for restoration of criminal proceedings in the damage report no. DR. 29065 dated 14.05.2005 issued against Mr. Raj Singh Gehlot and revival of FCA case (FP/HR/Others/13983/2015) submitted by M/S Ambience Developers and Infrastructure Private Limited for regularizing of the diversion of forests land for Non-Forestry purpose

since the PCCF office letter no. NT/D-III-6381/4344 dated 16.10.2015 issued after due consideration of facts by then PCCF concluded that land bearing khasra no. 526, 533, 534, 535 and 536 are not forest land and therefore cancelled both DR no. 29065 dated 14.05.2008 and FCA case no. FP/HR/Others/13983/2015 and directed DFO Gurugram to withdraw the prosecution case from Special Environment Court, Faridabad was ordered to be restored by the Government of Haryana through office of Additional Chief Secretary vide letter no. 4346-Ft-52015/4852 dated 31.03.2017.

22. That in reply to the contents of Para No 22 of Original Application, It is submitted that since the PCCF office letter no. NT/D-III-6381/4344 dated 16.10.2015 concluded that land bearing khasra no. 526, 533, 534, 535 and 536 are not forest land and therefore need for obtaining forest clearance under FC Act for use of forest for non-forestry purpose does not arise. The applicability of Environment Clearance does not fall in the domain of Forest Department.
23. That the averment made by applicant in the Para No 23 of Original Application are not in the domain of Forest Department and therefore cannot be replied with.
24. That the averment made by applicant in the Para No 24 of Original Application are denied. It is submitted that forest department remain ever vigilant and take action according to law for any violation of forest laws committed in the construction of commercial structures.
25. That the content of Para no 25 are wrong and denied. The Applicant have no cause of action to invoke the jurisdiction of Hon'ble National Green Tribunal as there is no diversion of forest land for non-forestry purpose in the present case. The contents of Preliminary Submissions are being reiterated.
26. That the content of Para no 26 of Original Application are relating to bonafides of the applicants and needs no reply by the answering respondents.
- 27-33. The content of Para no 27 to 33 of Original Application lists Respondents No. 1 to 8 to the Original Application and needs no reply.
- 34-35. The content of Para no 34 and 35 of Original Application lists Respondents no 9 and 10 to the Original Application. The averments made by the applicant that the acts of the officers of the forest department & head as PCCF Haryana are not legally commendable are wrong and vehemently

denied. It is submitted that actions of the Forest Department and Head as PCCF were informed by facts of the case and was fair, reasonable and as per law. It is also wrong and vehemently denied that Forest offences are increasing due to callous and careless attitude of the authorities. Forest Department and its Officials have endeavored to protect the forest in all earnest and have always taken action against the violators in forest offences as per law.

36. That the content of Para no 36 of Original Application are admitted to the extent that they are matter of record. However, it is submitted that it was concluded vide PCCF office letter no, NT/D-III-6381/4344 dated 16.10.2015 that the land bearing khasra no. 526, 533, 534, 535 and 536 are not forest land and therefor provisions of Forest Conservation Act, 1980 are not applicable on these land being non-forest land.
37. That the content of Para no 37 of Original Application are highly speculative in nature and not based on any material facts and lacks substance. Further, HUDA Act and TCP Act are outside the domain of Forest department. The contents of Preliminary Submissions are being reiterated.
38. That the contents of Para no 38 of the Original Application are for seeking instructions from Hon'ble NGT to the Respondent No 5 (HUDA) and Respondent no 8 (M/S Ambience Developers and Infrastructure Pvt Limited through Raj Singh Gehlot) to immediately stop and discontinue further construction and of the project and seek appropriate environmental approvals in accordance with law, which needs no reply from the Answering Respondents. Further, the applicants seeks directions from Hon'ble NGT to all the Respondents to ensure compliance of the its Orders/directions. It is submitted that the Answering Respondents have highest regards for the Hon'ble Tribunal and any direction/orders issued by the Hon'ble Tribunal will be fully complied with. The contents of preliminary submissions are being reiterated.
39. In reply to the contents of Para No 39 of Original Application, It is submitted that the present Application of the applicant is without merits. It is wrong and denied that the balance of convenience lies in favour of the applicants as it was concluded after due consideration of the facts the land in question is not forest land and therefore question of violation of IFA, 1927 and FC Act, 1980 does not arise. Relying on the opinion rendered by

the O/o AG, Haryana; the Government of Haryana through office of Additional Chief Secretary vide letter no 4346-Ft-52015/4852 dated 31.03.2017 directed for restoration of letter no. NT/D-III-6381/4344 dated 16.10.15 and withdrawal of letter no Admin-D-3-6381/43-44 dated 19.01.2016. Accordingly, then PCCF vide Office Memorandum no. NT/D-III-6381/82-86 dated 12.04.2017 restored the letter no. NT/D-III-6381/43-44 dated 16.10.2015 and withdrew the letter no Admin-D-3-6381/61-64 dated 19.01.2016.

It is, therefore, respectfully prayed that the present Original Application may kindly be dismissed with costs in the interest of Justice as it is devoid of merits.

40. That the contents of Para 40 of the Original Application lists ground of appeal for the adjudication of the Hon'ble Tribunal. Each of the ground of appeal raised by the applicant is replied as under:

a. It is wrong and denied that 4486 sq meter of notified Protected Forest land along the Sikandarpur Nathupur bundh and Nathupur have been diverted for non-forestry purpose without obtaining statutory permission from Government of India, MoEF as per the provisions of the FC Act, 1980. It is submitted that a damage report (DR 29065 dated 14.05.2008) was issued against Sh. Raj Singh Gehlot, for encroachment/construction on the Protected Forest land of Nathupur Bundh and the Forest department had also initiated prosecution against the offenders in the Special Environment Court, Faridabad (PC Case No. 7G/08-09). M/S Ambience Developers and Infrastructure Pvt. Ltd. also applied for diversion of forest land as per the provisions of Forest Conservation Act, 1980 vide proposal no. FP/HR/Others/13983/2015. Subsequently, M/s Ambience Developers and Infrastructure Pvt. Ltd. filed a representation before the Principal Secretary, Forests, Haryana which was forwarded to PCCF, Haryana. PCCF decided the representation after due consideration of facts vide office letter no. NT/D-III-6381/4344 dated 16.10.15 and concluded that land bearing khasra no. 526, 533, 534, 535 and 536 are not forest land and therefore cancelled both DR no. 29065 dated 14.05.2008 and FCA case no. FP/HR/Others/13983/2015 and directed DFO Gurugram to withdraw the prosecution case no 7G/08-09 from Special Environment Court, Faridabad. Government of Haryana through

office of Additional Chief Secretary vide letter no. 4346-Ft-52015/4852 dated 31.03.2017 had decided that aforesaid PCCF letter no. NT/D-III-6381/4344 dated 16.10.15 shall continue to remain valid. Therefore, the ground of OA is not proper and valid as the land in question has been determined to be non-forest land requiring no clearance under the provisions of FC Act,1980.

- b. The contents of para (b) are non-specific and vague in nature and cannot be deemed to be proper ground for filling present Original Application.
- c. The contents of para (c) are non-specific and vague in nature and cannot be deemed to be proper ground of appeal for the present cause of Original Application.
- d. The contents of para (d) are also non-specific and vague in nature. The application does not contain any material facts in support of the claimed damage to the environment and no ground to file present OA is established by the applicant.
- e. The contents of para (e) are mere restatement of the provision of NGT act which is not a ground to file present OA.
- f. The contents of para (f) are wrong and denied, It is submitted that Answering Respondents have acted as per law. It is submitted that the then PCCF, vide office letter no. NT/D-III-6381/4344 dated 16.10.15 had concluded after due consideration of the facts of case that land bearing khasra no. 526, 533, 534, 535 and 536 are not forest land. Therefore, no offence committed either under IFA, 1927 or FC Act, 1980. Hence the ground of OA as stated does not exist. Reference may kindly be made to facts placed at para no 15 and 16 of preliminary submissions which are being reiterated
- g. The contents of para (g) are wrong and denied. It is wrong and vehemently denied that the Answering Respondents have collaborated and colluded with Respondent No 5 and 8. It is submitted that based on the due consideration of the facts of the case it was concluded that the land bearing khasra no. 526, 533, 534, 535 and 536 are not forest land. The facts relied upon for reaching the conclusion are analyzed in detail in the file noting ((Pg 50-53 of the O.A.). Since, it is established that the land in question is not forest land therefore the question of violation of provision of Indian Forest Act,1927 and

Forest Conservation Act, 1980 as elaborated in the Original Application do not arise. Thus, no ground as alleged is made to file present OA and same is liable to be rejected.

41. That the contents of Para No. 41 of the Original Application are wrong and denied. The reference made to limitation clause by the applicant is redundant as it is established that there is no violation of IFA, 1927 or FC Act, 1980 in the present case. Moreover, present OA is barred by limitation and liable to be dismissed.
42. That the contents of No. 42 of the Original Application are denied for want of knowledge. The contents of Preliminary Submissions are being reiterated.
43. That the contents of No. 43 of the Original Application are denied for want of knowledge. The contents of Preliminary Submissions are being reiterated.

In view of the above stated facts, it is clear that the present Original Application is without merits. It is, therefore, respectfully prayed that the present Application may kindly be dismissed with costs in the interest of Justice as it is devoid of merits.

Place:- Gurugram

Dated:- 25/04/2023

(Vasvi Tyagi)

Chief Conservator of Forests (South),
Gurugram

Verification: -

Verified that the contents of Preliminary Submission Para No. 1 to 6 and Para 1 to 43 of reply on merits are true and correct to the best of my knowledge and belief based upon the information derived from official record which I believe to be true and correct. No part of it is false and nothing has been concealed therein.

Place:- Gurugram

Dated:- 25/04/2023

(Vasvi Tyagi)

Chief Conservator of Forests (South),
Gurugram



50

ANNEXURE-A1

Sub: Request for not to charge penalty in our request for diversion of 4484 sq. meters of forest land for internal roads/services to Integrated Township-Ambiance Island, NH-8, Gurgaon Haryana- regarding

Ref: PSF&W Dy no 2797 dated 17.9.2015

The above mentioned representation of M/S Ambiance Developer and Infrastructure Pvt Ltd was received and was analysed to find out the facts on the issues involved. The representation is against the imposition of penal compensatory afforestation (Penal CA) cost on the proposal for diversion of forest land of Nathupur bundh in the village Nathupur Gurgaon. Mr. Rajeshwar Deshwal representing M/S Ambiance Developer and Infrastructure Pvt Ltd personally submitted documents to prove that the area applied for was not a forest land and the application under FCA was submitted on the advice of senior officers of the forest department because false case under Indian Forest Act was lodged against Mr Raj Singh Gehlot, CMD, M/S Ambiance Developer and Infrastructure Pvt Ltd and prosecution case has filed in the Environment Court, Faridabad. His main contention was that the Sikandarpur-Nathupur bundh was in fact situated on land possessed by DLF and its Associate Companies and the forest land measuring 2.2.hectare has already been diverted in favour of DLF on 4.4.2007. He argued that the land belonging to M/S Ambiance Developer and Infrastructure Pvt Ltd and its Associate companies has khasra numbers which does not belong to the Sikandarpur-Nathupur bundh as per the information supplied by the Irrigation Department in 2002 for de-notification of the Sikandarpur-Nathupur bundh which had lost its relevance due to development in and around Nathupur, Gurgaon.

The whole analysis is based on the records available with the Forest Department. As per the record the Sikanderpur-Nathupur Bundh was constructed by the Irrigation Department in 1950-52 and was constructed to protect the inhabitants and village abadies from downstream coming from catchment area consisting of Aravallies. The land was not owned by the Irrigation Department but by private individuals of the concerned village. Plantation was raised on the bundh to stabilise the soil on the bundh and create a wind break. The bundh was notified as protected forest (PF) u/s 29 of Indian Forest Act 1927 along with many other bundhs, irrigation channels drains etc. on 2.12.1981 by the Forest Department assuming the same to be government forest land.

The Nathupur bundh forest land is recorded in the Forest record of Gurgaon Forest Division as under:

Sikanderpur-Nathupur Bundh: 0-8.25 RD; 2.51 Km long; 30 ft wide ; Area=2.26 Hectare.

(copy attached)

4

It was discovered from office file that the Irrigation Department wrote to the Divisional forest officer, Gurgaon vide letter no 3786 dated 27.8.2002 to give permission for abandonment and levelling of the said bundh and demanded that a certificate be recorded that the bundh in question does not fall in Reserve Forest category and NOC be issued to this effect.

D.F.O. Gurgaon also wrote to Conservator of Forests, Gurgaon vide letter no 1117 dated 24.12.2002 to de-notify the bundh area falling in the Nathupur village which was owned by the DLF and associate companies. (Copy attached). CF Gurgaon further informed the CCF (protection), Haryana vide letter no 252 dated 6.5.2003 that the entire Nathupur bundh falls in the revenue estate of Nathupur village and as per revenue record owned by private individuals khasra no , length etc. was as mentioned in the referred letter of DFL dated 24 12 2002.

As per the report of the CF Gurgaon the length of the bundh was 9500 feet (2.85 km) and width was 52 feet and area was calculated as 11.34 acre (4.59 hectare).

Khasra no

:436,430,405,392,391,389,88,109,120,119,118,117,97,96,94,93,91,92,150,153,165, 154,157,158,159.

The length is comparable as per the forest record (8.25 RD = 2.56 km) but the width was recorded as 30 feet because in the absence of precise record all bundh were considered as 30 feet wide (copy of the forest record attached) with area of 2.26 hectare.

The DLF provided the list of the khasra numbers which was owned by private persons including DLF on which bundh was located (copy attached) as per the information provided by the Irrigation Department measuring 4.32 hectare. The length of the bundh was reported to be 9500 feet (2.85 km).

DLF applied for the diversion of following forest owned by DLF measuring 5.4 acre (2.2 ha).

93,94,96,97,117,118,119,120,151,153,387,157,430,437

It is important to note that the forest land owned by individual bearing following Khasra numbers were not diverted and remains as forest land.

405, 398,392,391,389,109,91,92,150,154,158,159,165.

The present representation of M/S Ambience Developer and Infrastructure Pvt Ltd relates to the denial of the existence of Nathupur Bundh on the land owned by M/S Ambience Lagoon and its associate companies which is a recorded as protected forest (PF) in forest record.

The details of the khasra no provided by the Ambience Developer and Infrastructure Pvt Ltd are as under

1. 536,537,538,541,543,444,462,563,564,539,540,542,545,546 measuring 10.46 acres developed by Sara Estate Pvt Ltd,
2. 577,578,579,580,582,583,584,585,586,587,588,589,433,435,448,449,450,526 measuring 27.19 acres developed by Alankar Apartment Pvt Ltd;
3. 3min,529,528,534, 530,531,532,533,527,535,2/2/1 measuring 18.98 acre developed by HLF Enterprise Pvt Ltd.

Aggrieved by the prosecution case filed in the Environment Court, Faridabad and as advised by the senior forest officers of the forest Department, M/S Ambience Developer and Infrastructure Pvt Ltd submitted proposal for diversion of the forest land. In the proposal under FCA vide file no FP/HR/OTHERS/13983/2015, submitted by M/S Ambience Developer and Infrastructure Pvt Ltd has given following details of forest land for diversion:

Length of bundh = 283 mtr

Width of bundh = 15.85 mtr

Khasra no involved in bundh= 526, 533,534,535 and 536

Area of the bundh = 4486 sq. mtr for which diversion is to be applied

In order to find merit of the case, a comparison of the khasra numbers provided by the Irrigation Department to the Divisional Forest Officer, Gurgaon for permission for levelling the Nathupur bundh, which was later recommended by the conservator of Forests has been done and it shows that the entire bund measuring 2.85 KM with khasra details does not pass through khasra number and area owned by the applicant M/S Ambience Developer and Infrastructure Pvt Ltd for the project named Ambience Islands, NH 8, Gurgaon. The proposal for the diversion of part of Nathupur bundh PF under FCA measuring 4486 sq. mtrs. passing through khasra no 526,533,534,535 and 536 was submitted whereas these khasra numbers are not mentioned in the report of the Irrigation Department submitted in 2002 as part of Nathupur bundh.

It appears that field staffs of Gurgaon Forest Division has erred in identifying the location of the bundh due to non-availability of authentic land records to be made available by the owner department. The 8.25 RD long Nathupur bundh constructed and maintained by the Irrigation Department was treated as owned by the Irrigation department and the area was notified by general notification in 3.5.1958 (copy attached) when all irrigation systems were notified as protected forest. After formation of Haryana, all roads, irrigation systems, canals, bundhs, railway lines etc. were re-notified as PF. This may be an error of judgement by the Gurgaon Forest Division in identifying the exact location of forests especially when clear identification pillars were not fixed on ground.

It has been argued by the M/S Ambience Developer and Infrastructure Pvt Ltd that the damage report issued in the name of Mr. Raj Singh Gehlot was not appropriate because the above mentioned pieces of lands were owned by the

हरियाणा सरकार



RIGHT TO INFORMATION

Company and Mr. Raj Singh did not commit any forest offence. It was alleged the prosecution of Mr Raj Singh in the Environment Court was against law and malafide motive. It was further argued that the building for which the DI issued for diverting 380 meter long and 16 meter wide area of Nathupur E measuring 6080 sq. mtrs. was already complete in 2003 and completion certificate was also issued by competent authority.

In light of the analysis of records, the khasra numbers of land owned by M/S Ambience Developer and Infrastructure Pvt Ltd does not forms part of Nathuput bundh in the revenue village Nathupur and therefore are not protected under Forest (PF) and as such Forest Conservation Act 1980 is not applicable and damage report issued for violation of IFA is not also applicable. There seems to be an error of judgement on part of the forest officials in issuing damage report and filing of prosecution case in the Environment Court, Faridabad but was however done in the interest of the Forest Department for protection of forest and discharge of its official duty.

Accordingly the damage report (DR) no 29065 dated 14.5.2008 issued against Mr. Raj Singh Gehlot may be cancelled and prosecution case no 7G/08-C may be withdrawn with the permission of the Hon'ble Environment Court Faridabad.

The FCA case FR/HR/others/13983/2015 submitted by M/S Ambience Developer and Infrastructure Pvt Ltd vide may be allowed to be withdrawn since no forest land is involved.

PCCF

Agreed

8/10/15
CF(FC)

M/R

डा. राजीव कुमार 4344 एन. 16-10-2015

7

17/10



Subject: Withdrawal of Prosecution Case no 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of IFA, 1927 – reg.

---0---

F/A is PCCF office letter no NT/D-II-6381/ 4344 dt. wherein instructions have been given to withdraw the ongoing Prosecution Case no. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of IFA, 1927 against Sh. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/FCA,1930.

2. In this regard following facts need to be put on record:

- i.) That the Sikanderpur-Nathupur Bundh is a protected forest vide notification no: S.O 251/C.A.16/27/S.29/81 dated 2nd December, 1981. Accordingly the provisions of Indian Forest Act,1927 and Forest Conservation Act, 1980 are applicable in the said land. That in the present case, the accused carried out unauthorized constructions leading to the destruction of Forest area- thereby violating the IFA, 1927 and the FCA, 1980.
- ii.) Satellite imageries of the area of the year 2000 clearly shows Sikanderpur-Nathupur Bundh as a continuous linear feature with linear arrays of trees on both sides (F/B). The Longitudinal section of the Sikanderpur-Nathupur Bundh as obtained from the Department of Irrigation, State of Haryana, is also enclosed herewith (F/C), which reveals that the total length of this bundh/Protected forests is 9500 feet which is 2.895 Kilometers which is further corroborated by the measurement of 2.87 Kms. from the satellite imagery.

GOVERNMENT OF HARYANA

KEEP HARYANA CLEAN AND POLLUTION FREE



- iii.) The superimposed of the geo-reference sajra onto the on satellite imagery clearly reveals that the bundh is passing through the Khasra numbers 531,535 and 533. It is clear that the land bearing khasra numbers 531, 533 and 535 forms a part of the bundh and also part of the land on which Ambience lagoon apartments now stand constructed- clearly highlighting the destruction of a stretch of Protected Forest.
- iv.) Irrespective of the details contained in para.2(iii) above, the time-tagged imageries of the site clearly reveal the presence of the Bundh/Protected Forest during 2000/²⁰⁰² and the exact geo-space is presently being occupied by the constructed buildings (F/D) . This clearly and photographically establishes the physical fact of the violation of IFA,1927- be it in whichever khasra number.
- v.) Infact, the letter No. ¹¹⁰⁹ 7315 dated ^{27/4/1992} 9/8/2012 (F/E) from the DTP, Gurgaon clearly states the existence of a Bundh in the area pertaining to license number 19 of 18.98 acres (the present area) .
- vi.) The above evidence has already been placed on record in the Hon'ble High Court Of Punjab and Haryana in CRM No. 34200 of 2012 in case of Raj Singh Gehlot s/o Late Shri Nihal Singh Versus State of Haryana and others.

3. Once a case is filed in a Court then further action is taken as per the provisions of the CrPC, 1861 and the Indian Evidence Act, 1872. The Departments's role is reduced to and as one of the parties and as per the legal statutory provisions:

GOVERNMENT OF HARYANA
KEEP HARYANA CLEAN AND POLLUTION FREE



- i.) All evidence is placed before the court to be proved/ disproved only by the Court as per provisions of Indian Evidence Act. No party can presume/ usurp the role of the Court and take fresh evidence into consideration. All such evidence is to be produced before the Court for being proved/ disproved (F/F). The present case amounts to the department giving evidence against itself- a practice contrary to the practice of jurisprudence in this country. Whatever the outcome of this case, the above mentioned letter (F/A) will now be used by the accused as evidence and has completely vitiated the entire case of the Govt. The haste in issuing such directions without consulting the field formations should have been avoided. Copies of earlier letters sanctioning withdrawal of cases from Court have been placed on file. The present letter (F/A) leaves the Dept. wide open for a civil/ harassment suit.
- ii.) Section 321 of the Criminal Procedure Code clearly lays down the legal/ Code requirements before any case can be withdrawn from a Court of Law (F/G). It codifies the procedure that the prior approval of the Government is required before the Public Prosecutor can file an application for withdrawal of the case. No such approval of the Government has been taken in this case and the same need to be taken on File.
- iii.) The Code requirement as detailed in para 3 (ii) above is also the established precedent followed by the Forest Dept. in cases where withdrawal of prosecution cases



- 4 -

has taken place in the past, e.g. approval of the Govt. (the Hon'ble CM) was taken for withdrawal of prosecution in case no. 508/9 and 509/9 -Avtaar Singh Bhadana (Ghata Shamsabaad) V/s State of Haryana from the Spl. Environment Court Faridabad (F/H). Similar prior approval was also taken for withdrawal of prosecution in case No. 13/08 - Sh Satpal Dhiman, SDO Irrigation V/s State of Haryana in Spl Environment Court Kurukshetra (F/I).

4. Further as per instruction no 12(xi) and (xii) of 17.79 of the Haryana Forest Manual – Part II (F/J), no Damage Report can be written off without a regular office order- which obviously means that the concerned DFO needs pass a detailed speaking order cancelling the DR. Moreover, this can only be done if the case is yet to be filed in a Court of Law as otherwise it would amount to contempt of Court. Moreover, it is a matter of serious consideration if the Dept. really wants such *suo-moto* withdrawal of prosecution cases from Courts by any office in the State. It would wreck havoc with the system of implementation of Forestry laws in the State.

5. Therefore, the matter is submitted for :

i.) Reviewing the decision taken to withdraw the ongoing Prosecution Case no. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of IFA, 1927 against Sh. Raj Singh

GOVERNMENT OF HARYANA
KEEP HARYANA CLEAN AND POLLUTION FREE

RIGHT TO
INFORMATION

Gehlot for violations under the Indian Forest Act, 1927/FCA,1980 in view of the facts contained in paras.2-4 above **or**;

ii.) Submit the file for the approval of the Government if it is still decided that it will be in public interest to withdraw the Case no. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of IFA, 1927 against Sh. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/FCA,1980 .

DCF, Gurgaon
3.11.2015

1324-A
3/11/15
C.F.(South Circle)

2807
4-11-015
CCF (Prot. II)

APCCF (Forestry)

for opin.
44ms
5/11
ADD. SDA has briefed me. He has sendt that opin of AG Hays may be useful on this issue also
16/11/15
5/11

PCCF

(a) PCCF may call EF(Pc) and hear his views on case
(b) May consider holdi^{ng} order dated 16/10/15 till opin of AG is received. in public interest.
44ms
5/11

GOVERNMENT OF HARYANA
KEEP HARYANA CLEAN AND POLLUTION FREE

(P.T.O)



As instructed by worthy PCCF, undersigned visited the location in Gurgaon. The bundh in question physically exists on both side of building, which is bone of contention. Submitted to PCCF nodan for further n.a.

G.S. G.S.
27/11

~~PCCF~~. This issue was discussed with AAG HR & OSD capt. Bhupinder Singh on 6.11.2015 at Chandigarh along with cf south Sh. M.D. Sinha. After discussion, it was desired that file be submitted for perusal and orders of AG Haryana. Send it through P.S. forests D/30/11/15

RIGHT TO
INFORMATION

The details of the case may kindly be perused at page 1 to 6/N ante. At present the prosecution case no. 7G/08-09 is sub judice before the Hon'ble Environment Court, Faridabad against Sh. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/Forest Conservation Act, 1980 and CRM No. 34200 of 2012-Raj Singh Gehlot vs. State of Haryana and others is also pending before the Hon'ble Punjab and Haryana High Court.

The matter has been examined afresh by this office in light of the aforementioned events. The observations of the Deputy Conservator of Forests, Gurgaon have further found corroboration in the noting of Additional Principal Chief Conservator of Forests (Forestry) dated 27.11.2015 in which it has been remarked that: "As instructed by worthy PCCF, undersigned visited the location in Gurgaon. The bundh in question physically exists on both sides of building, which is bone of contention..." Upon further and thorough perusal of all records and files and based upon the above mentioned inputs this office has come to the conclusion that the land in question is forest land.

The matter was discussed with OSD to the Hon'ble Chief Minister, Haryana and Additional Advocate General, Haryana on 06.11.2015 at Chandigarh wherein it was advised that the file may be submitted for the advice/orders of Ld. Advocate General, Haryana.

Keeping the above in view, the file is submitted for the following considerations:-

- (1) The letter no. NT/D-III-6381/4344 issued by the then Principal Chief Conservator of Forests, Haryana dated 16.10.2015 needs to be withdrawn.
- (2) The case of the user agency for diversion may be processed as per law.
- (3) The case may be allowed to reach its logical conclusion

U.O. No PS/PEER/274
Dated 24-12-2015

PSFT

SSFT

Urgent. Examine

31/12/15

[Signature]
PCCF

Advocate General

GOVERNMENT OF HARYANA

KEEP HARYANA CLEAN AND POLLUTION FREE



- 4 -

There are drastically opposed views in this case of the former PCCF and present department at present. A meeting may be called of the following: CC (SP) DCF GM, CF (SM), ^{MBHPDC} ~~ATCF (i)~~, PCCF and CF (FA) to resolve and arrive at a final view on:

- (1) merits
- (2) procedural lapses.

~~The~~ PCCF may call their officers on 4/1/15 and examine all views and documents and hold the meeting in my room in the afternoon at 3.00 pm.

SSFT/PCCF

Inna

[Signature]
31/1/15

(1) The issue of ~~procedural~~ lapses ^{cancel the charge report} in withdrawing this prosecution can at the level of PCCF has to be examined legally. Also how was the FA cancelled at the level of PCCF?

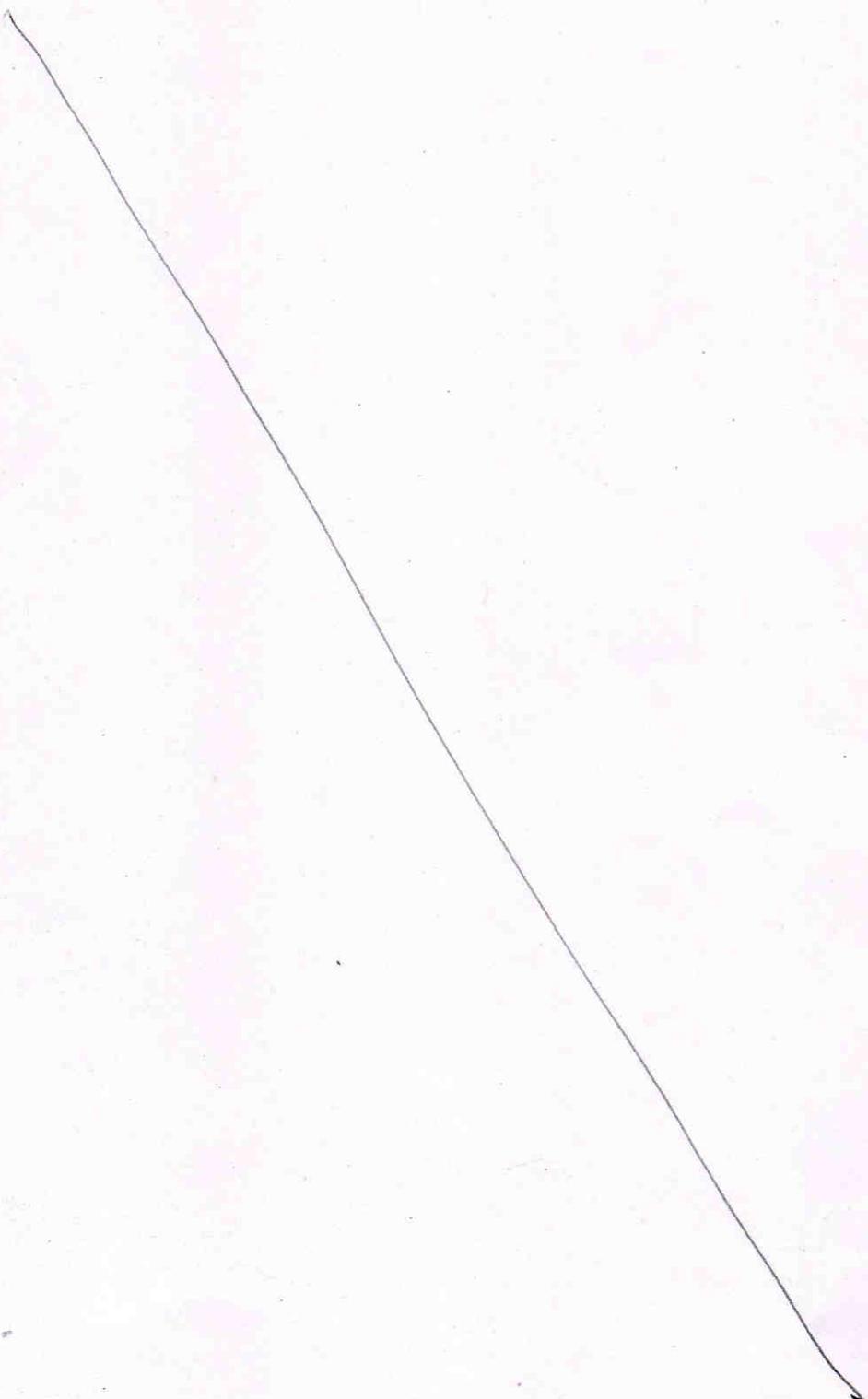
(2) Point-wise examination of the issue of the disputed land being forest or not has to be done and firm recommendation on merits defensible in the High Court has to be submitted.

- 9 -

Let PCCF examine the agents and
submit the case on 4th December.

SSFI/PCCF

Ag
1/12/15



Contd. next pg.



As per letter memo no. 4346-SSFt.-2015/SPL dated 31.12.2015 a meeting was held with Managing Director, HFDC (Former APCCF (Forestry), CF(FC), CF(South), Gurgaon and DCF(T), Gurgaon. The following observations were made:-

A letter dated 14.09.2015 from Ambience Developers and Infrastructure Pvt. Ltd. was addressed to the office of Principal Secretary to Government of Haryana, Forest Department (annexed as Annexure -I) in which it was requested by the applicant for not charging penalty in the matter pertaining to diversion of forest land measuring 4486 sq. metres on land owned by M/s Ambience Developers & Infrastructure Pvt. Ltd. and Ambience Group of Companies. The same was thereafter vide diary no. 2797 dated 17.09.2015 sent to the office of PCCF, Haryana for necessary action.

The representation given by Ambience Developers and Infrastructure Pvt. Ltd. vide letter dated 14.09.2015, was examined in the office of PCCF, Haryana. Conservator of Forests (Forest Conservation), who deals with such cases gave his observations in his noting dated 08.10.2015. (photocopies of noting pages annexed as Annexure-II) Thereunder the following observation was made:

"In light of the analysis of the records, the khasra numbers of land owned by the M/s Ambience Developer and Infrastructure Pvt. Ltd. does not forms part of the Nathupur bundh in the revenue village Nathupur and therefore are not protected Forest (PF) and as such Forest Conservation Act 1980 is not applicable and the damage report issued for violation of IFA is not also applicable. There seems to be an error of judgment on part of the forest officials in issuing damage report and filing of prosecution case in the Environment Court, Faridabad but was however, done in the interest of the Forest Department for protection of forest and discharge of its official duty.

Accordingly the damage report (DR) no 29065 dated 14.5.2008 issued against Mr. Raj Singh Gehlot may be cancelled and prosecution case no 7G/08-09 may be withdrawn with the permission of the Hon'ble Environment Court, Faridabad.

GOVERNMENT OF HARYANA
KEEP HARYANA CLEAN AND POLLUTION FREE



The FCA case FR/HR/others/13983/2015 submitted by M/S Ambience Developer and Infrastructure Pvt Ltd vide may be allowed to be withdrawn since no forest land is involved."

Thereupon, the then Principal Chief Conservator of Forests, Haryana vide letter no. NT/D-III-6381/4344 dated 16.10.2015 addressed to Divisional Forest Officer (T), Gurgaon (F/A) directed that the damage report (DR) no. 29065 dated 14.05.2008 issued against Mr. Raj Singh Gehlot is cancelled and that DFO(T) Gurgaon is directed to withdraw the prosecution case no. 7G/08-09 with the permission of the Hon'ble Environment Court, Faridabad.

The findings of Conservator of Forests (Forest Conservation) [hereinafter referred to as CF(FC)] quoted above were based on the following observations:

- (1) That the whole analysis carried out was based on the records available with the Forest Department. As per these records Sikanderpur-Nathupur Bundh was constructed by the Irrigation Department in 1950-52 on land that was not owned by the Irrigation Department but by private individuals of the concerned village.
- (2) That the bundh was notified as protected forest u/s 29 of the Indian Forest Act, 1927 on 02.12.1981 by the Forest Department assuming the same to be government forest land. The specifications of Nathupur Bundh forest land is recorded in the forest records of Gurgaon Division as follows: 0-8.25 RD: 2.51 Km long; 30 ft. wide; Area 2.26 Hectare (Annexure-III).
- (3) That the Irrigation Department had written to DFO, Gurgaon vide letter dated 27.08.2002 (Annexure-IV) to give permission for abandonment and leveling of the bundh in question and for issuance of certificate that the bundh in question does not fall in the category of Reserved Forest and NOC to this effect be issued. DFO, Gurgaon wrote to Conservator of Forests, Gurgaon vide letter dated 24.12.2002 (Annexure-V) to de-notify bundh area falling in Nathupur village which was owned by DLF and associate companies. Wherein CF Gurgaon further informed CCF (Protection) vide letter dated

GOVERNMENT OF HARYANA
KEEP HARYANA CLEAN AND POLLUTION FREE



हरियाणा सरकार

06.05.2003 that the entire Nathupur bundh falls in the revenue estate of Nathupur village and as per revenue record owned by private individuals. As per the report of CF, Gurgaon the length of the bundh was 9500 feet (2.85 km), width was 52 feet and area was calculated at 11.34 acre (4.59 hectare). It was observed that the length was comparable to the forest record (8.25 RD=2.56km) but the width was recorded as 30 feet wide, because in the absence of precise record all bundhs were considered as being 30 feet wide.

- (4) That DLF had provided a list of Khasra numbers which was owned by private persons including DLF on which the bundh was located as per the information provided by the Irrigation Department measuring 4.32 hectare. The length of the Bundh was reported to be 9500 feet(2.85 Km).
- (5) Thereafter, DLF applied for the diversion of certain forest land owned by DLF measuring 5.4 acres (2.2 hectare). It has been remarked in the noting by CF(FC) that forest land owned by individuals bearing following khasra numbers was not diverted and remains forest land, viz. 405, 398, 392, 391, 389, 109, 91, 92, 150, 154, 158, 159, 165.
- (6) In the present representation submitted by M/S Ambience Developer and Infrastructure Pvt. Ltd, the existence of Nathupur Bundh on the land owned by M/S Ambience Developer and Infrastructure Pvt. Ltd and its associate companies, which is recorded as a protected forest in forest records is denied.
- (7) M/S Ambience Developer and Infrastructure Pvt. Ltd had submitted a proposal for diversion of forest land being aggrieved by the filing of the prosecution case in the Environment Court. Therein under the proposal M/S Ambience Developer and Infrastructure Pvt. Ltd had given the following details of the forest land for diversion: Length of bundh: 283 mtr; width of bundh:15.85 mtr, khasra no. involved in the bundh: 526, 533, 534, 535 and 536; area of the bundh: 4486 sq. mtr.
- (8) CF(FC) in his noting has remarked that in order to find merit in the case, a comparison of the khasra numbers provided by the Irrigation Department to

GOVERNMENT OF HARYANA

KEEP HARYANA CLEAN AND POLLUTION FREE



DFO, Gurgaon for permission for leveling Nathupur Bundh, which was later recommended by Conservator of Forests had been done and it showed that the entire bundh measuring 2.85 km with khasra details does not pass through khasra numbers and area owned by M/S Ambience Developer and Infrastructure Pvt. Ltd for their project named Ambience Islands. It is further mentioned in the noting by CF(FC) that the proposal submitted above by M/S Ambience Developer and Infrastructure Pvt. Ltd for diversion of a part of Nathupur bundh PF under FCA for area measuring 4486 sq. mtr. passing through khasra no. 526, 533, 534, 535 and 536, is thus for an area which does not find mention in the report of the Irrigation Department submitted in 2002 as being a part of Nathupur Bundh.

- (9) It has further been submitted by CF(FC) in the noting that it appeared that the field staff of Gurgaon Forest Division has erred in identifying the location of the bundh due to non-availability of authentic land records to be made available by the owner department. The 8.25 RD long Nathupur Bundh constructed and maintained by the Irrigation Department was treated as owned by the Irrigation Department and the area was notified by a general notification in 03.05.1958 (Annexure-VI) when all irrigation systems were notified as protected forest. It is further observed herein that this may have occurred on account of an error of judgment by the Gurgaon Forest Division in identifying the exact location of forests especially when clear identification pillars were not fixed on the ground.

Subsequently Deputy Conservator of Forests, Gurgaon on 03.11.2015 sent a note to CF (South) which was forwarded to CCF (Protection-II) which was then brought to the notice of the O/o PCCF, Haryana certain pertinent observations and suggestions in the present case for consideration. The observations and suggestions submitted by the Deputy Conservator of Forests, Gurgaon were made in reference to the letter no. NT/D-III-6381/4344 dated 16.10.2015 sent by the then Principal Chief Conservator of Forests, Haryana, as discussed above.

RIGHT TO
INFORMATION

हरियाणा सरकार

The Deputy Conservator of Forests, Gurgaon submitted the following contentions with regard to the aforementioned letter dated 16.10.2015:

- (1) That the Sikanderpur-Nathupur Bundh is a protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 and thereby the provisions of Indian Forest Act and Forest Conservation Act are applicable in the said area. The accused have in the present case carried out unauthorized constructions leading to the destruction of forest area and thereby violated the Indian Forest Act, 1927 and the Forest Conservation Act, 1980.
- (2) DCF, Gurgaon further submits that satellite images of the land in question of the year 2000 clearly shows Sikanderpur-Nathupur Bundh as a continuous linear feature with linear arrays of trees on both sides. The longitudinal section of the Bundh as obtained from the Irrigation Department reveals that the total length of this Bundh is 9500 Feet which is 2.895 Km and this is further corroborated by the measurement of 2.87 Kms. based upon satellite imagery.
- (3) Superimposition of geo-reference sajra onto the satellite imagery clearly reveals that the bundh is passing through the Khasra numbers 531, 533 and 535, and the fact that this land is also a part of the land on which Ambience Lagoon apartments now stand constructed highlights the destruction of a stretch of Protected Forest.
- (4) In addition to the aforementioned the Deputy Conservator of Forests, Gurgaon has also mentioned that time tagged imageries of the site in question clearly reveal the presence of the Bundh/Protected Forest during the year 2000/2002 and the exact geo-space is being occupied by the constructed buildings. This clearly and photographically establishes the physical fact of violation of IFA, 1927, be it in whichever Khasra number.
- (5) The Deputy Conservator of Forests, Gurgaon has also cited letter no. 1109 dated 27.04.1992 issued by DTP, Gurgaon which clearly states the existence

GOVERNMENT OF HARYANA

KEEP HARYANA CLEAN AND POLLUTION FREE



RIGHT TO
INFORMATION

हरियाणा सरकार

of a bundh in the area pertaining to license number 19 of 18.98 acres, i.e. the present area.

(6) It has also been mentioned by DCF, Gurgaon that the aforementioned evidence has already been placed on record before the Hon'ble Punjab and Haryana High Court in CRM No. 34200 of 2012 -Raj Singh Gehlot v. State of Haryana and others.

The Deputy Conservator of Forests, Gurgaon goes on to submit that in light of the aforementioned the decision taken to withdraw the ongoing prosecution case no. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of Indian Forest Act, 1927 against Mr. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/Forest Conservation Act, 1980 needs to be reviewed.

The observations of the Deputy Conservator of Forests, Gurgaon have further found corroboration in the noting of Additional Principal Chief Conservator of Forests (Forestry) dated 27.11.2015 in which it has been remarked that: "*As instructed by worthy PCCF, undersigned visited the location in Gurgaon. The bundh in question physically exists on both sides of building, which is bone of contention...*"

In addition to the aforementioned it has come to be seen that in the noting of CF(FC) reference has been made to Khasra numbers 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159 being reported as Nathupur Bundh and thereby implying that any other khasra number would not be a part of the bundh. This seems to have been done inadvertently. As it may be seen that since the total possible linear length of the bundh by including all these khasra numbers in alignment in the direction of the bundh, i.e. between khasra number 159 to 436, comes to only 5874 ft. However, the total length of the bundh has been measured at 9500 ft and the same is undisputed. Thus, 3626 ft. of the Bundh should accordingly lie outside the aforementioned Khasra numbers.

Letter dated 27.04.1992 of DTP, Gurgaon (F/E) clearly states that there is a bundh in the area, i.e. on the land in question comprising khasra no. 2,3,4,5,527,528,529,530,531,532,533,534,535.

GOVERNMENT OF HARYANA

KEEP HARYANA CLEAN AND POLLUTION FREE

हरियाणा सरकार



RIGHT TO INFORMATION

Therefore, in light of the aforementioned submissions and observations, preponderance of evidence suggests that the land in question is forest land. The letter no. NT/D-III-6381/4344 dated 16.10.2015 issued by PCCF, Haryana in which it is stated that land under reference is not a forest land needs to be treated as *non est*.

The matter was discussed with OSD to the Hon'ble Chief Minister, Haryana and Additional Advocate General, Haryana on 06.11.2015 at Chandigarh wherein it was advised that the file may be submitted for the advice/orders of Ld. Advocate General, Haryana.

Keeping the above in view, the file is submitted for the following consideration:-

- (1) The letter no. NT/D-III-6381/4344 issued by the then Principal Chief Conservator of Forests, Haryana dated 16.10.2015 need to be treated as *non est*.
- (2) The case of the user agency for diversion may be processed as per law.
- (3) The case may be allowed to reach its logical conclusion.

U.O.No. PS/PCCF/291
Dated. 5-1-2016

J. J. J.
PCCF 4/1/16
Principal Chief Conservator of Forests
Haryana, Panchkula

PSFt.

Advocate General

Under what rules can the prosecution can be withdrawn? Was the PCCF authorized to order the withdrawal of the prosecution case at his level? Once the case is with the court, how what is the relevance of the cancellation of the damage report? Could the PCCF cancel the FCA report at his level, without inquiring into this contested case? When the matter was under consideration of the Government? What rules have been violated? Pl. put up with legal opinion & Adv.

~~PSFt~~

J. J. J.
5/1/16

Why was a copy of the internal diversion order to the applicant without obtaining finality leads to adverse order by the Hon'ble High Court against the Department?

GOVERNMENT OF HARYANA

KEEP HARYANA CLEAN AND POLLUTION FREE



220

- 12

हरियाणा सरकार

From pre-page

The case pertains to irregular and wrong order dated 16.10.2015 issued by Dr. S. S. Jattan, the then PCCF regarding prosecution case No. 7G/08-09 in the Hon'ble Environment Court, Faridabad for damage report (DR) No. 29065 dated 14.05.2014 issued against Mr. Raj Singh Gehlot. A case in the matter is also pending in the Hon'ble High Court of Punjab and Haryana.

Brief facts of case are as under. A damage report (DR) No. 29065 dated 14.05.2008 was issued against Mr. Raj Singh Gehlot as per the provision of the Indian Forest Act, 1927 for illegal breaking of protected forest land in Nathupur Bundh in Gurgaon district for construction works by M/S Ambience Developer and Infrastructure Pvt. Ltd.. The Nathupur bundh is notified as protected forests vide notification of 1981. The offence case was sent for prosecution in the Hon'ble Environment Court, Faridabad in 2008-09. Sh. Raj Singh Gehlot has filed an application CRM No. 34200 of 2012 in the Hon'ble High Court of Punjab and Haryana for quashing the damage report. In 2015, the company had applied for post facto approval under the Forest (Conservation) Act, 1980 for diversion of said forest land for which damage report was issued. While forwarding the proposal for diversion to the Govt., PCCF recommended imposing 10 times penalty for violation of forest laws. Since the matter was subjudice in the Hon'ble Environment Court and Hon'ble High Court, the Govt. vide letter 21.09.2015 requested the then PCCF to examine the legal issues in the matter and submit detailed report along with recommendations in the forest diversion case. PCCF was also requested to submit justification for imposing 10 times penalty referring to the instructions issued by the MoEFCC.

Instead of replying to the issues raised by the Govt., the then PCCF took entirely different and irregular decision on representation of M/S Ambience Developer and Infrastructure Pvt. Ltd., Based solely on the documents provided by applicant, PCCF/CF(FC) decided that the land in question is not a forest land. PCCF vide letter dated 16.10.2015 (i) directed DFO, Gurgaon to withdraw the prosecution case with permission of the Environment Court, (ii) cancelled the damage report, and (iii) cancelled FCA case submitted by the Company. Such drastic decision has been taken without consultation with/obtaining report from DFO, Gurgaon/CF, Gurgaon or report of the Department or other Departments. PCCF/CF (FC) have relied only on the documents supplied by the applicant, like a letter of Irrigation Department without further verification or inquiry. Further, a copy of the communication was provided to the Company and the same has been produced

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE



before the Hon'ble High Court. The Hon'ble High Court vide order 04.11.2015 has taken cognizance of the letter and directed Forest Authorities to decide whether they would like to continue the proceeding in the said circumstances. The case is fixed for hearing on 07.01.2016.

The Deputy Conservator of Forests, Gurgaon vide a note dated 03.11.2015 forwarded through Conservator of Forests, South, Gurgaon and Chief Conservator of Forests-II, Gurgaon has submitted the following contentions with regard to the aforementioned letter dated 16.10.2015 of PCCF. The Nathupur Bundh is a protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 and thereby the provisions of Indian Forest Act and Forest Conservation Act are applicable in the said area. The satellite images of the land in question of the year 2000 clearly shows Sikanderpur-Nathupur Bundh as a continuous linear feature with linear arrays of trees on both sides. Superimposition of geo-reference sajra onto the satellite imagery clearly reveals that the bundh is passing through the land in question where construction has taken place in violation of forest laws. The reference has also been made by DTP, Gurgaon which states the existence of a bundh in the area pertaining to license number 19 of 18.98 acres, i.e. the present area. The DCF, Gurgaon has also stated that the aforementioned evidence has already been placed on record before the Hon'ble Punjab and Haryana High Court in CRM No. 34200 of 2012 -Raj Singh Gehlot v. State of Haryana and others. In view of above, the Deputy Conservator of Forests, Gurgaon has requested to review the directions/orders given by PCCF vide letter dated 16.10.2015.

The Additional Principal Chief Conservator of Forests (Forestry), after field inspection, has also stated that the bundh in question physically exists on both sides of building, which is bone of contention. After examining all above information, the current PCCF has now submitted that the land in question is forest land and the letter issued by the then PCCF dated 16.10.2015 is to be treated as non est. The PCCF has further submitted that the case for diversion of forest land under the FCA, 1980 be revived and the case may be allowed to reach logical conclusion.

Without referring the case to the Govt., the then PCCF ^{Dr Sattan} vide letter dated 16.10.2015 has unilaterally and wrongly decided that the land in question is not a forest land and therefore, approval under FCA is not required for use of this forest land for non-forestry purpose, and DFO, Gurgaon has been directed to withdraw the case from the Environment Court. As per the legal opinion of ADAs, PCCF is not authorized to withdraw a prosecution case without prior approval of the

हरियाणा सरकार



Government. Further, since the case is subjudice in the Environment Court where all documents including the damage report have been placed, damage report can not be cancelled.

In view of above, it is suggested that the decisions taken by PCCF vide letter dated 16.10.2015 namely cancellation of damage report, cancellation of FCA cases and withdrawal of case from Environment Court require to be reviewed. The letter issued by Dr. S. S. Jattan, then PCCF dated 16.10.2015 being illegal and irregular needs to be cancelled. Besides, the FCA case for diversion of the said land is to be revived after addressing the issues raised by the Govt., vide letter dated 21.09.2015. The Hon'ble High Court may be requested for adjournment of the case till the process of review of the matter is completed. The case is submitted to Worthy Principal Secretary/Hon'ble Forest Minister for consideration/order, please.

'X'

[Signature]

D. Hembram
SSFt
06.01.2016

PSFt

In this case, a wrong and unauthorised decision was issued by Dr Jattan former PCCF to withdraw a prosecution case in the High Court Rajiv Gohil vs State of Haryana, at his level based on insufficient facts. Now the PCCF has submitted a strong case for cancellation of letter dt 16-10-15 issued earlier. This may be kindly approved as at 'X' above. Next date in High court is 7-1-16.

1489
26/1/16
07/1/16

Forest Ministry

[Signature]
6/1/16
Amit Jha
PS F&W

~~PSFt~~

Urgent. Put up letter to PCCF.

[Signature]
7-1-2016

~~SSFt~~

[Signature]
7/1/16

USFt

[Signature]
7/1/16

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE

[Signature]
15/1/16
[Signature]

FWM/184
7/1/16



हरियाणा सरकार

(1)

PUC I: Raj Singh Gehlot
Alankar Apartments Private Ltd
Dated 30.07.2016

PUC II: Raj Singh Gehlot
Sara Estate Private Ltd.
30.07.2016

PUC I relates to request by Alankar Apartments Pvt. Ltd. regarding issuance of clarification regarding non-applicability of forest laws on land measuring 7.25 acres i.e., 11 Bighas and 12 Biswa comprising Khasra Nos. 448, 449 and 526 located at village Nathupur, District Gurgaon.

Vide PUC II, similar request has been made by Sara Estate Pvt. Ltd. with regard to their land measuring 12.01 acres i.e., 19 Bighas, 4 Biswa and 7 Biswani comprised in Khasra Nos. 536, 537, 538, 541, 543, 544, 562, 563 and 564 measuring 14 Bigha 5 Biswa and 2/3rd share in Khasra Nos. 539, 540, 542, 545, 546, 561 measuring 4 Bigha 19 Biswa and 7 Biswani located at village Nathupur, District Gurgaon.

These companies have submitted that Environment Authority in Haryana requires clarification from Forest Department regarding applicability of forests laws for issuing "Consent to Establish" and "Consent to Operate" in respect of any development. Therefore, they applied to the Divisional Forest Officer, Gurgaon on 19.10.2015 for necessary clarification. However, in spite of repeated request and representation, DFO, Gurgaon has not issued said clarification. The companies have requested to issue appropriate directions to DFO, Gurgaon to issue the requisite clarification/NOC in respect of their lands.

It is submitted that Ambience Developers and Infrastructures Pvt. Ltd. vide letter dated 16.05.2016 submitted similar representation to pass appropriate direction to DFO, Gurgaon for issuing clarification regarding applicability of forest laws on the said lands of Alankar Apartments Pvt. Ltd. and Sara Estate Pvt. Ltd.

The facts of the case are as follows. M/s Alankar Apartments Private Ltd. vide letter dated 01.04.2015 had applied to DFO, Gurgaon for issuing clarification regarding applicability of forest laws on land measuring 11 Bigha and 12 Biswa bearing Khasra no. 448, 449 and 526 in the revenue estate of village Nathupur, Tehsil & District Gurgaon, Haryana. Similarly, M/s Sara Estate Pvt.Ltd. vide dated 19.10.2015 had also applied for issuing of clarification regarding applicability of forest laws on land measuring 12.01 acre or 14 Bigha 5 Biswa bearing Khasra Nos. 536, 537, 538, 541, 543, 544, 562, 563 and 564 and Khasra Nos. 539, 540, 542, 545, 546, 561 measuring 4 Bigha 19 Biswa and 7 Biswani.

DFO, Gurgaon vide letter dated 08.09.2015 has informed M/s. Alankar Apartments Pvt. Ltd the company that Khasra No. 526 is part of protected forests wherein the provisions of the Forest (Conservation) Act, 1980 are applicable. DFO, Gurgaon vide letter dated 06.11.2015 has informed M/s. Sara Estates Pvt. Ltd that the company has applied for diversion of forest land under the FCA and till the approval of MoEF is not obtained, no further clarification can be given in this regard. DFO, Gurgaon vide letter dated 21.03.2016 has further informed

Government of Haryana

KEEP HARYANA CLEAN AND POLLUTION FREE

K (V)
33-194
(C.D)

K
99-202



Conservator of Forests, Gurgaon that the said matter is the subject matter of case CRM No. M-34200/2012 pending for adjudication before the Hon'ble High Court wherein the company has filed application for quashing of prosecution proceedings before the learned Environment Court, Faridabad. DFO has informed that as the matter is subjudice, no further clarification can be issued.

The Nathupur Sikanderpur Bandh is notified as protected forest vide notification No. S.O. 251/C.A. 16/27/S.29/81 dated 2nd December 1981. However, there is ambiguity with regard to Khasra Numbers of Nathupur Sikanderpur bandh. DFO, Gurgaon in the written statement filed in CRM No. 34200 of 2012, before the Hon'ble Punjab & Haryana High Court Chandigarh has stated that Khasra No. 531, 533 and 535 are parts of Nathupur Sikanderpur Bandh. The CRM is still pending in the Hon'ble High Court. DFO, Gurgaon and CF, Gurgaon have determined Khasra No. 531, 533 and 535 as parts of the bandh based on geo-reference map. If these three Khasra Nos. namely 531, 533 and 535 constitute the Nathupur Sikanderpur Bandh protected forest, the lands of Alankar Apartments Pvt. Ltd. comprising Khasra No. Nos. 448, 449 and 526 and Sara Estate Pvt. Ltd. bearing Khasra No. 536, 537, 538, 541, 543, 544, 562, 563, 564, 539, 540, 542, 545, 546 and 561 are not forest land.

However, Ambience Infrastructure and Developers Pvt. Ltd. had also applied for diversion of 0.4486 ha forest land bearing Khasra No. 526, 533, 534, 535, and 536 under the Forest (Conservation) Act, 1980. Thus, these Khasra No. 526, 533, 534, 535, and 536 are forest land and the provision of FC Act is applicable. The company in its representation has submitted that the land bearing Khasra No. 526, 533, 534, 535, and 536 are private land owned by the company and not a forest land. The company has further stated that it has applied for diversion of forest land under the FCA, 1980 on the request of senior officers of the Department to settle the long pending issue. If land bearing Khasra No. 526, 533, 534, 535, and 536 is presumed to be Nathupur Sikanderpur bandh, land of Alankar Apartments Pvt. Ltd. bearing Khasra No. 526 falls in protected forest and Khasra No. 536 of M/s Sara Estate Pvt. Ltd is part of protected forests.

On a representation submitted by Ambience Developers and Infrastructure Pvt. Ltd., Sh. S. S. Jattan IFS, earlier PCCF, vide letter 16.10.2015 held that land bearing Khasra No. 526, 533, 534, 535, and 536 for which the company applied under the FC Act, 1980 is not a forest land. The decision was taken by PCCF on the basis of a communication of Irrigation Department in 2002 which stated that Nathupur bandh measuring 4.59 ha comprises Khasra No. 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159. Subsequently, incumbent PCCF based on the report submitted by DFO, Gurgaon and CF, Gurgaon informed the Govt. that the land in question bearing Khasra No. 526, 533, 534, 535, and 536 is in fact forest land and the letter dated 16.10.2015 in which it is stated that the land under reference is not a forest needs to be treated as *non est*. After considering the case, the Govt. vide letter dated 15.01.2016 directed PCCF to withdraw letter dated 16.10.2015 and PCCF vide letter dated 19.01.2016 has withdrawn the letter dated 16.10.2015.

The issue regarding applicability of forest laws on lands owned by M/s Alankar Apartments Private Ltd., M/s Sara Estate Pvt. Ltd. and Ambience



225

हरियाणा सरकार

13

Infrastructure and Developers Pvt. Ltd is linked to Nathupur Sikanderpur bandh which is notified as protected forest under the Indian Forest Act, 1927. There is ambiguity with regard to Khasra Numbers of Nathupur Sikanderpur bandh and the Department does not have records of Khasra number of the land. DFO, Gurgaon and CF, Gurgaon have determined Khasra No. 531, 533 and 535 as parts of the bandh based on geo-reference map prepared on Google imageries after superimposing with Sajra. It would be appropriate to direct PCCF to find out exact Khasra Nos. of Nathupur-Sikanderpur bandh which constitutes protected forest as per the revenue records. Once Khasra Nos. are determined, this long pending issue can be resolved once for all. Submitted for order, please.

Specimen No. 609
File No. 8-8-16
Dated: 8-8-16

D. Hembram
SSFt
08.08.2016

ACS Ft

*Discussed Today.
Rl put up as discussed.*

19/8/16

SSF

O/o ACS Forests Deptt.

File No. 2443

Date 19-8-16

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE



As discussed, the facts of the case are as follows. As per the provisions of the Indian Forest Act, 1927, the State Government can notify any forest land or waste land which is the property of Government, or over which over which the Government has proprietary rights, as protected forests. The land under private ownership cannot be notified as protected forests. In order to avoid infringement on private property, the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein are required to be inquired into and recorded at a survey or settlement before issuing notification declaring such forest-land or waste-land as protected forests.

The Nathupur Bundh has been notified as protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 as per the provisions of the Indian Forest Act, 1927. The Bundh was constructed by Irrigation Department in 1950s. As per the revenue record or record of Irrigation Department, the lands of this Bundh belong to private individuals. These lands were never acquired by Irrigation Department and hence these are not the property of the State Government. Therefore, these lands owned by private individuals cannot be notified as Protected Forests as per the provisions of the IFA, 1927. As informed by W/ACS, Forest, the matter was discussed with Sh. D. K. Sinha IFS, Inspector General of Forests, MoEFCC, Govt. of India in presence of PCCF and Conservator of Forests (South Circle), Gurgaon. It was pointed out that Nathupur Bundh has inadvertently been notified as Protected Forests although the lands belong to private Individuals. The notification under Section 29 of the IFA, 1927 was issued declaring these lands as Protected Forests although these lands do not belong to the State Government, rights of private persons not inquired and recorded, and report from Irrigation Department was not taken before issuing notification.

Some of the lands comprising Nathupur Bundh are owned by M/s. DLF. In 2002, DLF submitted a proposal for de-notification of Nathupur Bundh as Protected Forest. Forest Department although agreed, in principle, de-notification could not be done due to the facts that ownerships of these lands lied with other private individuals. DLF obtained information from the Irrigation Department about Nathupur bandh measuring 4.59 ha comprising Khasra No. 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159. The company applied for diversion of 2.2 ha land under the Forest (Conservation) Act, 1980 comprising following Khasra No. 437, 430, 119, 118, 117, 97, 96, 94, 93, 151, 153, 157 which are owned by the company. The Govt. of India, MoEF accorded approval for diversion of 2.2 ha of forest land to DLF.

M/s Ambience Developer and Infrastructure Pvt. Ltd and its Associate Companies own lands in village Nathupur. Forest Department issued a damage report (DR) No. 29065 dated 14.05.2008 against Mr. Raj Singh Gehlot for illegal breaking of protected forest land in Nathupur Bundh in Gurgaon district for construction works by M/S Ambience Developer and Infrastructure Pvt. Ltd. and the offence case was sent for prosecution in the Hon'ble Environment Court, Faridabad in 2008-09. Sh. Raj Singh Gehlot has filed an application CRM No. 34200 of 2012 in the Hon'ble High Court of Punjab and Haryana for



हरियाणा सरकार

quashing the damage report. DFO, Gurgaon in written reply submitted before the Hon'ble High Court has stated that the lands bearing Khasra No. 531, 533 and 535 are part of Nathupur Bundh and was cleared illegally for construction of Ambience Lagoon Apartment.

Ambience Infrastructure and Developers Pvt. Ltd. had applied for diversion of 0.4486 ha forest land bearing Khasra No. 526, 533, 534, 535, and 536 under the Forest (Conservation) Act, 1980. The company has stated that it has applied for diversion of forest land under the FCA, 1980 on the request of senior officers of the Department to settle the long pending issue.

On a representation submitted by Ambience Developers and Infrastructure Pvt. Ltd., Sh. S. S. Jattan IFS, earlier PCCF, vide letter 16.10.2015 held that land bearing Khasra No. 526, 533, 534, 535, and 536 for which the company applied under the FC Act, 1980 is not a forest land. The decision was taken by PCCF on the basis of a communication of Irrigation Department in 2002 which stated that Nathpur bandh measuring 4.59 ha comprises Khasra No. 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 151, 153, 165, 154, 157, 158, 159. As the land bearing Khasra No. 526, 533, 534, 535, and 536 is not part of Khasra Nos. provided by Irrigation Department, therefore, PCCF concluded that the land for which the company applied for FCA clearance was not a forest land. Accordingly, the damage report issued against Sh. Raj Singh Gehlot and FCA case were cancelled and DFO, Gurgaon was directed to withdraw the prosecution case pending in the Environment Court, Faridabad.

Subsequently, incumbent PCCF based on the report submitted by DFO, Gurgaon and CF, Gurgaon informed the Govt. that the land in question bearing Khasra No. 526, 533, 534, 535, and 536 is in fact forest land and the letter dated 16.10.2015 in which it is stated that the land under reference is not a forest needs to be treated as *non est*. After considering the case, the Govt. vide letter dated 15.01.2016 directed PCCF to withdraw letter dated 16.10.2015 and PCCF vide letter dated 19.01.2016 has withdrawn the letter dated 16.10.2015.

Alankar Apartments Pvt. Ltd. and Sara Estate Pvt. Ltd., Associate Companies of Ambience have applied for issuance of clarification regarding applicability of forest laws on their lands located at village Nathupur district Gurgaon. Alankar Apartments Pvt. Ltd. has sought clarification regarding land measuring comprising Khasra Nos. 448, 449 and 526 while Sara Estate Pvt. Ltd. with regard to their land bearing Khasra Nos. 536, 537, 538, 541, 543, 544, 562, 563, 564 539, 540, 542, 545, 546, and 561. DFO, Gurgaon vide letter dated 08.09.2015 has informed M/s. Alankar Apartments Pvt. Ltd the company that Khasra No. 526 is part of protected forests wherein the provisions of the Forest (Conservation) Act, 1980 are applicable. DFO, Gurgaon vide letter dated 06.11.2015 has informed M/s. Sara Estates Pvt. Ltd that the company has applied for diversion of forest land under the FCA and till the approval of MoEF is not obtained, no further clarification can be given in this regard. DFO, Gurgaon vide letter dated 21.03.2016 has further informed Conservator of Forests, Gurgaon that the said matter is the subject matter of case CRM No. M-

From pre-page

As discussed, some of the issues in this case are as under:

1. When was the notification under the IFA, 1927 issued?
2. Was it issued on the reference from the Irrigation Department? If yes, copy of the same be put up.
3. When was the bandh constructed by the Irrigation Department?
4. When did Forest Department plant trees on this bandh? Records of proof be attached.
5. Noting portion and letter by former PCCF, Sh. S. S. Jattan and subsequent noting and letter from the present PCCF for withdrawing the letter of Sh. S. S. Jattan, former PCCF.
6. When did the matter of violation came to notice of DFO?
7. Do we have a provision of rectification in the IFA?
8. What does the record of Revenue and Irrigation Departments say about the bandh?

As per the provisions of the Indian Forest Act, 1927, the State Government can notify any forest land or waste land which is the property of Government, or over which the Government has proprietary rights, as protected forests. The land under private ownership cannot be notified as protected forests. In order to avoid infringement on private property, the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein are required to be inquired into and recorded at a survey or settlement before issuing notification declaring such forest-land or waste-land as protected forests.

The Nathupur Bundh has been notified as protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 as per the provisions of the Indian Forest Act, 1927. PCCF has informed that the map dated circa 1962 prepared and signed by the officers of Drainage Division, Gurgaon and longitudinal section of Sikanderpur-Nathupur bandh shows the existence of bandh in 1962. PCCF has also informed that parts of the bandh were owned by civil Panchayat as per the Jamabandi of 1975-76. PCCF has not provided any information regarding the reference from Irrigation Department for notification of this bundh nor regarding plantation carried out after the notification. However, it has been stated that and the status of bandh as protected forest remains valid irrespective of presence of trees, plantations etc. As per available records in the file, the lands of this Bundh belong to private individuals. These lands were never acquired by Irrigation Department and hence these are not the property of the State Government. Therefore, these lands owned by private individuals should not have been notified as Protected Forests as per the provisions of the IFA, 1927.

As informed by W/ACS, Forest, the matter was discussed with Sh. D. K. Sinha IFS, Inspector General of Forests, MoEFCC, Govt. of India in presence of PCCF and Conservator of Forests (South Circle), Gurgaon. It was pointed out that Nathupur Bundh has advertently/inadvertently been notified as Protected Forests although the lands belong to private Individuals. Sh. D. K. Sinha is of the view that this will be a case of withdrawal of notification, not the case of

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE

Alag-A
File-III



diversion under the Forest (Conservation) Act. The notification under Section 29 of the IFA, 1927 was issued declaring these lands as Protected Forests although these lands do not belong to the State Government, rights of private persons not inquired and recorded, and report from Irrigation Department was not taken before issuing notification.

M/s Ambience Developer and Infrastructure Pvt. Ltd and its Associate Companies own lands in village Nathupur. Forest Department issued a damage report (DR) No. 29065 dated 14.05.2008 against Mr. Raj Singh Gehlot for illegal breaking of protected forest land in Nathupur Bundh in Gurgaon district for construction works by M/S Ambience Developer and Infrastructure Pvt. Ltd. and the offence case was sent for prosecution in the Hon'ble Environment Court, Faridabad in 2008-09. Sh. Raj Singh Gehlot has filed an application CRM No. 34200 of 2012 in the Hon'ble High Court of Punjab and Haryana for quashing the damage report. DFO, Gurgaon in written reply submitted before the Hon'ble High Court has stated that the lands bearing Khasra No. 531, 533 and 535 are part of Nathupur Bundh and was cleared illegally for construction of Ambience Lagoon Apartment.

Ambience Infrastructure and Developers Pvt. Ltd. had applied for diversion of 0.4486 ha forest land bearing Khasra No. 526, 533, 534, 535, and 536 under the Forest (Conservation) Act, 1980. The company has stated that it has applied for diversion of forest land under the FCA, 1980 on the request of senior officers of the Department to settle the long pending issue. In fact, Financial Commissioner and Principal Chief Conservator of Forests, Haryana in a meeting held under the Chairmanship of Chief Minister in 1992 informed that the area of the Ambience Infrastructure and Developers Pvt. Ltd. was devoid of forest and there was no plan to raise plantation therein.

On a representation submitted by Ambience Developers and Infrastructure Pvt. Ltd., Sh. S. S. Jattan IFS, earlier PCCF, vide letter 16.10.2015 held that land bearing Khasra No. 526, 533, 534, 535, and 536 for which the company applied under the FC Act, 1980 is not a forest land. PCCF has stated as under:

The representation of M/S Ambience Developer and Infrastructure Pvt Ltd was analysed to find out the facts on the issues involved. The subject matter of the representation is against the imposition of penal compensatory afforestation (Penal CA) cost on the proposal for diversion of forest land of Nathupur bundh in the village Nathupur Gurgaon. Mr. Rajeshwar Deshwal representing M/S Ambience Developer and Infrastructure Pvt Ltd personally submitted documents to prove that the area applied for was not a forest land and the application under FCA was submitted on the advice of senior officers of the forest department because a damage report for violation under Indian Forest Act 1927 was issued against Mr. Raj Singh Gehlot, CMD, M/S Ambience Developer and Infrastructure Pvt Ltd and prosecution case has been filed in the Environment Court, Faridabad. His main contention was that the Sikandarpur-Nathupur bundh was in fact situated on land possessed by DLF and its Associate Companies and the forest land measuring 2.2 hectare has already been diverted in

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE



favour of DLF on 4.4.2007. it was argued that the land belonging to M/S Ambience Developer and Infrastructure Pvt Ltd and its Associate Companies has Khasra numbers which does not belong to the Sikandarpur-Nathupur bundh as per the information supplied by the Irrigation Department in 2002 for de-notification of the Sikanderpur-Nathupur bundh which had lost its relevance due to development in and around Nathupur, Gurgaon. After verifying facts from records, it was discovered that D.F.O Gurgaon had written to Conservator of Forests, Gurgaon vide letter no. 1117 dated 24.12.2002 to de-fnotify the bundh area falling in the Nathupur village. CF Gurgaon further informed the CCF (protection), Haryana vide letter no. 252 dated 6.5.2003 that the entire Nathupur bundh falls in the revenue estate of Nathupur village and as per revenue record owned by private individuals khasra no. length etc. CF Gurgaon reported that the length of the bundh was 9500 feet (2.85 km) and width was 52 feet and area was calculated as 11.34 acre (4.59 hectare). As per deforest record of Gurgaon Forest Division, the length of the bundh was 2.56 Km (8.25 rd) and the width was 30 feet with area of 2.26 hectares.

Khasra no. of Nathupur bundh as reported by the Irrigation Department are :- 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159.

For the purpose of regularization of unauthorised forest diversion by M/S Ambience Developer and Infrastructure Pvt Ltd the proposal for the diversion of part of Nathupur bundh PF under FCA measuring 4486 Sq mtrs passing through khasra no. 526,533,534,535,and 536 was submitted. On analyses it has been discovered that these khasra no. are applied for are not mentioned in the report of the Irrigation Department submitted in 2002 as part of Nathupur bundh and therefore lands bearing 526, 533,534,535 and 536 khasra numbers are not forest land notify under Indian Forest Act 1927 and the damage report issued for violation of IFA on this land is not tenable.

Accordingly the damage report (DR) no.29065 dated 14.5.2008 issued against Mr. Raj Singh Gehlot is hereby cancelled and the DFO (T) Gurgaon is directed to withdraw the prosecution case no 7G/08-09 with the permission of the Hon'ble Environment Court, Faridabad. The FCA case FR/HR/others/13983/2015 submitted by M/s Ambience Developer and Infrastructure Pvt Ltd is hereby cancelled as withdrawn since no forest land is involved.

Subsequently, incumbent PCCF based on the report submitted by DFO, Gurgaon and CF, Gurgaon informed the Govt. that the land in question bearing Khasra No. 526, 533, 534, 535, and 536 is in fact forest land and the letter dated 16.10.2015 in which it is stated that the land under reference is not a forest needs to be treated as *non est*. The relevant noting of PCCF in this matter is reproduced as under:

Deputy Conservator of Forests, Gurgaon on 03.11.2015 sent a note to CF (South) which was forwarded to CCF (Protection-II) which was then brought to the notice of the O/o PCCF, Haryana certain

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE

File-IV
Notepage
10/14



pertinent observations and suggestions in the present case for consideration. The observations and suggestions submitted by the Deputy Conservator of Forests, Gurgaon were made in reference to the letter no. NT/D-III-6381/4344 dated 16.10.2015 sent by the then Principal Chief Conservator of Forests, Haryana, as discussed above.

The Deputy Conservator of Forests, Gurgaon submitted the following contentions with regard to the aforementioned letter dated 16.10.2015:

- (1) That the Sikanderpur-Nathupur Bundh is a protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 and thereby the provisions of Indian Forest Act and Forest Conservation Act are applicable in the said area. The accused have in the present case carried out unauthorized constructions leading to the destruction of forest area and thereby violated the Indian Forest Act, 1927 and the Forest Conservation Act, 1980.
- (2) DCF, Gurgaon further submits that satellite images of the land in question of the year 2000 clearly shows Sikanderpur-Nathupur Bundh as a continuous linear feature with linear arrays of trees on both sides. The longitudinal section of the Bundh as obtained from the Irrigation Department reveals that the total length of this Bundh is 9500 Feet which is 2.895 Km and this is further corroborated by the measurement of 2.87 Kms. based upon satellite imagery.
- (3) Superimposition of geo-reference sajra onto the satellite imagery clearly reveals that the bundh is passing through the Khasra numbers 531, 533 and 535, and the fact that this land is also a part of the land on which Ambience Lagoon apartments now stand constructed highlights the destruction of a stretch of Protected Forest.
- (4) In addition to the aforementioned the Deputy Conservator of Forests, Gurgaon has also mentioned that time tagged imageries of the site in question clearly reveal the presence of the Bundh/Protected Forest during the year 2000/2002 and the exact geo-space is being occupied by the constructed buildings. This clearly and photographically establishes the physical fact of violation of IFA, 1927, be it in whichever Khasra number.
- (5) The Deputy Conservator of Forests, Gurgaon has also cited letter no. 1109 dated 27.04.1992 issued by DTP, Gurgaon which clearly states the existence of a bundh in the area pertaining to license number 19 of 18.98 acres, i.e. the present area.
- (6) It has also been mentioned by DCF, Gurgaon that the aforementioned evidence has already been placed on record before the Hon'ble Punjab and Haryana High Court in CRM No. 34200 of 2012 -Raj Singh Gehlot v. State of Haryana and others.

The Deputy Conservator of Forests, Gurgaon goes on to submit that in light of the aforementioned the decision taken to withdraw the ongoing prosecution case no. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of Indian Forest Act, 1927 against Mr. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/Forest Conservation Act, 1980 needs to be reviewed.



The observations of the Deputy Conservator of Forests, Gurgaon have further found corroboration in the noting of Additional Principal Chief Conservator of Forests (Forestry) dated 27.11.2015 in which it has been remarked that: "As instructed by worthy PCCF, undersigned visited the location in Gurgaon. The bundh in question physically exists on both sides of building, which is bone of contention..."

In addition to the aforementioned it has come to be seen that in the noting of CF(FC) reference has been made to Khasra numbers 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 151, 153, 165, 154, 157, 158, 159 being reported as Nathupur Bundh and thereby implying that any other khasra number would not be a part of the bundh. This seems to have been done inadvertently. As it may be seen that since the total possible linear length of the bundh by including all these khasra numbers in alignment in the direction of the bundh, i.e. between khasra number 159 to 436, comes to only 5874 ft. However, the total length of the bundh has been measured at 9500 ft and the same is undisputed. Thus, 3626 ft. of the Bundh should accordingly lie outside the aforementioned Khasra numbers.

Letter dated 27.04.1992 of DTP, Gurgaon clearly states that there is a bundh in the area, i.e. on the land in question comprising khasra no. 2,3,4,5,527,528,529,530,531,532,533,534,535.

Therefore, in light of the aforementioned submissions and observations, preponderance of evidence suggests that the land in question is forest land. The letter no. NT/D-III-6381/4344 dated 16.10.2015 issued by PCCF, Haryana in which it is stated that land under reference is not a forest land needs to be treated as *non est*.

The matter was discussed with OSD to the Hon'ble Chief Minister, Haryana and Additional Advocate General, Haryana on 06.11.2015 at Chandigarh wherein it was advised that the file may be submitted for the advice/orders of Ld. Advocate General, Haryana.

Keeping the above in view, the file is submitted for the following considerations:

- (i) The letter no. NT/D-III-6381/4344 issued by the then Principal Chief Conservator of Forests, Haryana dated 16.10.2015 need to be treated as *non est*.
- (ii) The case of the user agency for diversion may be processed as per law.
- (iii) The case may be allowed to reach its logical conclusion.

After considering the case, the Govt. vide letter dated 15.01.2016 directed PCCF to withdraw letter dated 16.10.2015 and PCCF vide letter dated 19.01.2016 has withdrawn the letter dated 16.10.2015.

Alankar Apartments Pvt. Ltd. and Sara Estate Pvt. Ltd., Associate Companies of Ambience have applied for issuance of clarification regarding applicability of forest laws on their lands located at village Nathupur district Gurgaon. Alankar Apartments Pvt. Ltd. has sought clarification regarding land measuring comprising Khasra Nos. 448, 449 and 526 while Sara Estate Pvt. Ltd. with regard to their land bearing Khasra Nos. 536, 537, 538, 541, 543, 544, 562, 563, 564 539, 540, 542, 545, 546, and 561. DFO, Gurgaon vide letter dated

File - IV
Page 38 (e)

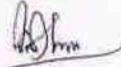


हरियाणा सरकार

08.09.2015 has informed M/s. Alankar Apartments Pvt. Ltd the company that Khasra No. 526 is part of protected forests wherein the provisions of the Forest (Conservation) Act, 1980 are applicable. DFO, Gurgaon vide letter dated 06.11.2015 has informed M/s. Sara Estates Pvt. Ltd that the company has applied for diversion of forest land under the FCA and till the approval of MoEF is not obtained, no further clarification can be given in this regard. DFO, Gurgaon vide letter dated 21.03.2016 has further informed Conservator of Forests, Gurgaon that the said matter is the subject matter of case CRM No. M-34200/2012 pending for adjudication before the Hon'ble High Court and as the matter is sub-judice, no further clarification can be issued.

Nonetheless, the Nathupur Bundh has been notified as protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 as per the provisions of the Indian Forest Act, 1927. As per record, the lands of this Bundh belong to private individuals. These lands were never acquired by Irrigation Department and hence these are not the property of the State Government. Therefore, these lands owned by private individuals should not have been notified be notified as Protected Forests as per the provisions of the IFA, 1927. However, the Bundh has advertently/inadvertently been notified as Protected Forests without inquiring and recording the rights of private persons and without report from Irrigation/Revenue Department.

As such there is no provision of denotification of protected forests in the Indian Forest Act, 1927. The proposal for denotification can be sent to the Central Government under the Forest (Conservation) Act, 1980. PCCF may be requested to re-examine the case and submit comments whether the notification no. S.O. 251/ C.A.A16/27/S.29/81 dated 2nd December 1981 can be withdrawn or whether Nathupur Bundh can be denotified. Accordingly the case is submitted for order, please.


D. Hembram
SSFt
31.08.2016

ACS Ft



Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

Subject: Regarding Representation dated 23.08.2016 of Ambience Developers & Infrastructure Pvt. Ltd.

In brief a damage report (DR) No. 29065 dated 14.05.2008 was issued against Mr. Raj Singh Gehlot as per the provision of the Indian Forest Act, 1927 for illegal breaking of protected forest land in Nathupur Bundh in Gurgaon district for construction works by M/S Ambience Developer and Infrastructure Pvt. Ltd. The Sikanderpur-Nathupur Bundh is a protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December, 1981 and thereby the provisions of Indian Forest Act, 1927. The offence case was sent for prosecution in the Hon'ble Environment Court, Faridabad in 2008-2009. Sh. Raj Singh Gehlot has filed an application CRM no. 34200 of 2012 in the Hon'ble High Court of Punjab and Haryana for quashing the damage report. In 2015, the company had submitted a proposal for diversion of 0.04486 ha. forest land for internal road/services to Integrated Township, Ambience Island, Gurgaon under the Forest (Conservation) Act, 1980 for diversion of said forest land for which damage report was issued. While forwarding the proposal for diversion to the Govt., PCCF recommended imposing 10 times penalty for violation of forest laws. Since the matter was subjudice in the Hon'ble Environment Court and Hon'ble High Court, the Govt. vide letter 21.09.2015 requested the then PCCF to examine the legal issues in the matter and submit detailed report along with recommendations in the forest diversion case. PCCF was also requested to submit justification for imposing 10 times penalty referring to the instructions issued by the MoEFCC. The Company submitted a representation to PCCF against imposition of 10 times penalty. It was submitted by the Company that the area applied for diversion was not a forest land and the application under FCA was submitted on the advice of senior officers of the department. The Company applied for diversion of 0.4486 ha. forest land bearing Khasra No. 526, 533, 534, 535 and 536.

Although Nathupur Bandh was notified as protected forests under the Indian Forest Act, 1927, the land records of the bandh are not available with the Departments. As such lands owned by private individuals are not declared as protected forests as per the provisions of IFA, 1927.

29. Protected forests. (1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest but which is the



Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled. (2) The Forest-land and waste-lands comprised in any such notification shall be called a 'protected forest'

While considering the representation of the company, PCCF relied upon the communications of DFO, Gurgaon and CF, Gurgaon wherein, there was a proposal for leveling and denotifying Nathupur-Bandh in 2002 as the land owned by DLF and Associated Companies and the same was not acquired by the Govt. The Irrigation Department provided information about Nathupur bandh measuring 4.59 ha. Comprising Khasra No. 436, 430, 405, 393, 391, 389, 88 109, 120, 119, 118, 117, 97, 96, 4, 93, 91, 92, 150, 153, 165 154, 157, 158, 159. However, the land was not denotified.

Many of these Khasra are owned by DLF. Since the land was not denotified, DLF applied for diversion of 2.2. ha. forest land comprising following Khasra No. 437, 430, 119, 118, 117, 97, 96, 94, 93, 151, 153, 157 under the FCA, 1980. The Govt. of India, MoEF accorded approval for diversion of 2.2 ha. of forest land to DLF. The Company applied for diversion of 0.4486 ha. forest land bearing Khasra No. 526, 533, 535 and 536. These Khasra Nos. are not part of Khasra No. as approved by Irrigation Department. Therefore, PCCF decided that the said land does not fall under the forest. Accordingly, PCCF vide letter dated 16.10.2015 cancelled the Damage Report issued against Sh. Raj Singh Gehlot; directed DFO, Gurgaon to withdraw the prosecution case with permission of the Environment Court and cancelled the FCA case as withdrawn.

DCF, Gurgaon vide his U.O. letter dated 03.11.2015 informed that PCCF, Haryana vide his letter No. NT/D-II-6381/4344 has given instructions to withdraw the ongoing Prosecution Case No. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of IFA, 1927 against Sh. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/FCA, 1980.

In this regard following facts need to be put up on record:-

- i) That the Sikanderpur-Nathupur Bundh is a protected forest vide notification no. S.O. 251/C.A.16/27/S.29/81 dated 2nd December, 1981. Accordingly the provisions of Indian Forest Act, 1927 and Forest Conservation Act, 1980 are applicable in the said land. That in the present case, the accused carried out unauthorized constructions leading to the destruction of Forest area-thereby violating the IFA, 1927 and the FCA, 1980.



(24)

Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

- ii) Satellite imageries of the area of the year 2000 clearly shows Sikanderpur-Nathupur Bundh as a continuous linear feature with linear arrays of trees on both sides. The Longitudinal section of the Sikanderpur-Nathupur Bundh as obtained from the Department of Irrigation, State of Haryana reveals that the total length of this bundh/Protected forests is 9500 feet which is 2,895 Kilometers which is further corroborated by the measurement of 2.87 Kms. from the satellite imagery.
- iii) The superimposed of the geo-reference sajra onto the on satellite imagery clearly reveals that the bundh is passing through the Khasra numbers 531, 533 and 535 forms a part of the bundh and also part of the land on which Ambience lagoon apartments now stand constructed- clearly highlighting the destruction of a stretch of Protected Forest.
- iv) Irrespective of the details contained in para. 2(iii) above, the time-tagged imageries of the site clearly reveal the presence of the Bundh/Protected Forest during 2000/2002 and the exact geo-space is presently being occupied by the constructed buildings. This clearly and photographically establishes the physical fact of the violation of IFA, 1927- be it in whichever khasra number.
- v) Infact, the letter No. 1109 dated 27.04.1992 from the DTP, Gurgaon clearly states the existence of a Bundh in the area pertaining to license number 19 of 18.98 acres (the present area).
- vi) The above evidence has already been placed on record in the Hon'ble High Court of Punjab and Haryana in CRM No. 34200 of 2012 in case of Raj Singh Gehlot S/o Late Shri Nihal Singh Versus State of Haryana and others.

On the basis of evidences submitted by DCF, Gurgaon, PCCF informed that the letter dated 16.10.2015 issued by PCCF, Haryana need to be treated as non est. The case of the User Agency for diversion may be processed as per law. The case may be allowed to reach its logical conclusion.

After considering the case, the Govt. vide letter dated 15.01.2016 directed PCCF to withdraw letter No. NT/D-III-6381/4344 dated 16.10.2015 issued by PCCF, Haryana and revive the proposal submitted by M/S. Ambience Developer and Infrastructure Pvt. Ltd. for diversion of forest land for non-forestry use under the Forest (Conservation) Act, 1980 in Gurgaon Forest Division. PCCF vide letter dated 19.01.2016 has withdrawn the letter dated 16.10.2015.

The parawise comment have been received from PCCF, Haryana on the representation dated 23.08.2016 submitted by Ambience Developers & Infrastructure Pvt. Ltd., which may kindly be perused at flag "ZZ". The PCCF, Haryana informed that the notification declaring Nathupur Bundh as PF was passed by the State Government. It is to be noted that such notification has been made by the government under the specific clause applicable for declaration of PF as per Indian Forest Act, 1927, which allows the passing of government notification



25

Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

pending settlement of rights in the event of any person coming forward within a reasonable period of time. However, in this regard no rights were ever claimed by any private person over the area in question, up until this case. Even the period of limitation would have long expired in case of any appeal. So far as Minutes of the Meeting dated 28.04.1992 is concerned, the PCCF, Haryana stated that the same does not overrule statutory law. Diversion of any forest land has to be done as per the provisions of the Forest Conservation Act, 1980 and rules made thereunder.

As regards to the statement regarding the area being part of social zone, the PCCF, Haryana pointed out that the Gurgaon Development Plan issued for the year 1996 clearly shows the strip of Nathupur Bundh as Forest within the Special Zone itself. The same status is maintained in Gurgaon Development plans for the years 2021, 2025 and 2031. Ambience Developers and Infrastructure Pvt. Ltd. would have thus been well aware of this fact and should have therefore followed the law of the land in this regard.

The PCCF, Haryana further informed that the department is bound by the notification issued by the Government and provisions of Forest Conservation Act, 1980. Adherence to the legal provisions is mandatory. The company had to obtain prior permission for the diversion of Forest Land duly marked in the Development plans or should have at least sought clarification from the Forest Department by following the due process of law before constructing the building and not as fait accompli after the completion of construction. It is also pertinent to note here that other companies have followed the legal provisions for the diversion of a portion of the said Bundh prior to engaging in any construction activity.

The Certificate of M/s Vardan EnviroNet produced by the Ambience Developers & Infrastructure Pvt. Ltd. has no validity vis-à-vis the Survey of India Map. The Survey of India Map is unimpeachable evidence, prepared by the authorized mapping Institute of the Govt. of India. It is relied upon by all the departments and is used for defence purposes as well. It is a primary piece of evidence and its authenticity is beyond doubt.

With regard to the extract Khasra numbers of the said Bundh, as the company has completely destroyed it, the department has no option but to rely on secondary evidence for the exact geo-location of the area. Because the company has gone for litigation in the matter and has not made available to the Forest Department the digitized aks-shajra or Tatima, the geo-matching of the khasra



28

Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

numbers may have standard errors. For the aforesaid reasons the geo-location of the Bundh has been scientifically determined and consequently, the Forest Department is not in a position to provide information on Khasra numbers around the lateral vicinity of the Bundh.

The PCCF, Haryana further informed that this matter is under adjudication before the Hon'ble Punjab and Haryana High Court, Chandigarh, where the stand of the Department has already been placed before the Hon'ble Court. Under these circumstances, to reply to the ad-indefinitum representations by the company, which are mere repetitions of their petition in the Hon'ble High Court in any other way will not be prudent. Further, a detailed report on this matter has already been submitted vide this office letter No. D-3-6281/1709 dated 24.08.2016, which may kindly be perused for further details.

It is submitted that the said Bundh of Sikanderpur-Nathupur was constructed during the year 1950-52 as marked in the Gurgaon Master Plan. Vide Notification dated 02.12.1981, the Strips of Govt. Forest land or waste lands whether under tree growth or not on either side of the metalled surface of the flowing water courses of all canals branches, distributaries, major, minor, drains and channels etc. under the control of Irrigation Department likewise Sikanderpur-Nathupur Bundh were declared as "Protected Forest" under section 29 of Indian Forest Act, 1927. This Notification was issued without Khasra Numbers of Revenue record. Even the then DFO, Gurgaon provided the information to Sh. Rajan Kohli S/o Sh. S.C. Kohli, R/o New Delhi vide his letter dated 22.11.2012 that the document regarding enquiry and survey under section 29 (3) of IFS regarding Sikanderpur-Nathupur Bundh pertaining to Notification dated 2.12.1981 is not available in their office. The XEN, Mewat Water Services Division, Nuh reported vide his letter dated 27.08.2002 that as per Sajra Plan and Jama Bandhi, the ownership as the disputed land does not belongs to Irrigation Department even the Khasra Number claimed to be under Bundh by the Irrigation Department also did not included any Khasra numbers owned by M/s Ambience Developer and Infrastructure Pvt. Ltd. In view of letter dated 27.08.2012 issued by XEN, Mewat Water Services Division, Nuh, the then DFO, Gurgaon and the then Conservator of Forests, South Circle, Gurgaon recommended vide their letters dated 24.12.2012 respectively that the earlier Notification dated 2.12.1981 may be de-notified



27

Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

(flag "Y" & "Z"). However, the matter regarding de-notification is still pending for want of queries raised by PCCF, Haryana.

In view of licence No. 19 of 1993 issued by Director, Town and Country Planning Khasra Nos. 529-South-West, 528, 534, 530, 531, 532, 533, 527 & 535 are declared as absolute ownership of M/s HLF Enterprises Pvt. Ltd. The damage report issued by Halka Forest Guard on 14.05.2008 is found without mentioning any Khasra Numbers of Revenue Record. It is also worthwhile to mention here that the then DFO, Gurgaon filed a Written Statement before the Hon'ble High Court in CRM No. 34200 of 2012 and stated therein that as per satellite imagery of google for the year 2002, the bundh/protected forests in question, is broken and structures have been erected by Sh. Raj Singh Gehlot (Petitioner) at the cleared site. The then DFO further stated in the Written Statement that the ownership of the said bundh vests with Irrigation Department and the land plan, Sajra and such other details of Khasra numbers are available with Irrigation department and the same are not available with Irrigation department and the same are not available with the Forest Department. That with the help of GIS (Geographical Information System) technology, the Khasra numbers through which the said bundh is passing, were found out.

It is also worthwhile to mention here that as per report of Conservator of Forests, South Circle, Gurgaon the length of the bundh was 9500 feet (2.85 km) and width was 52 feet and area was calculated as 11.34 acre (4.59 hectare) and this land indicated as Khasra No: 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159. Whereas, the details of Khasra Numbers provided by the M/s Ambience Developer and Infrastructure Pvt. Ltd. are as under:-

1. 536, 537, 538, 541, 444, 462, 563, 564, 539, 540, 542, 545, 546 measuring 10.46 acres developed by Sara Estate Pvt. Ltd.
2. 577, 578, 579, 580, 582, 583, 585, 586, 587, 588, 589, 433, 435, 448, 449, 450, 526 measuring 27.19 acres developed by Alankar Apartment Pvt. Ltd.
3. 3 min, 529, 528, 534, 530, 531, 532, 533, 527, 535, 2/2/1 measuring 8.98 acre developed by HLF Enterprise Pvt. Ltd.

Aggrieved by the prosecution case filed in the Environment Court, Faridabad and as advised by the senior forest officers of the forest department, M/s Ambience Developer and Infrastructure Pvt. Ltd. submitted proposal for



28

Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

diversion of the forest land. In the proposal under FCA vide file no. FP /HR/OTHERS/13983/2015, submitted by M/S Ambience Developer and Infrastructure Pvt. Ltd. has given following details of the forest land for diversion:-

Length of bundh = 283 mtr
 Width of bundh = 15.85 mtr
 Khasra no involved in bundh = 526, 533, 534, 535 and 536
 Area of the bundh = 4486 sq. mtr. for which diversion is to be applied.

In order to find merit of the case, the then Conservator of Forests (FC) wrote a note dated 08.10.2015 and mentioned that a comparison of the khasra numbers provided by the Irrigation Department to the Divisional Forest Officer, Gurgaon for permission for leveling the Nathupur bundh, which was later recommended by the Conservator of Forests has been done and it shows that the entire bund measuring 2.85 km. with khasra details does not pass through khasra number and area owned by the applicant M/s Ambience Developer and Infrastructure Pvt. Ltd. for the project named Ambience Islands, NH 8, Gurgaon. The proposal for the diversion of part of Nathupur bundh PF under FCA measuring 4486 sq. mtrs. passing through khasra no. 526, 533, 534, 535 and 536 was submitted whereas these khasra numbers are not mentioned in the report of the Irrigation Department submitted in 2002 as part of Nathupur bundh. The then Conservator of Forests (FC) further stated in his note dated 08.10.2015 that in the light of the analysis of records, the khasra numbers of land owned by the M/s Ambience Developer and Infrastructure Pvt. Ltd. does not forms part of the Nathupur Bundh in the revenue village Nathupur and therefore are not protected Forest (PF) and as such Forest Conservation Act 1980 is not applicable and the damage report issued for violation of IFA is not applicable. There seems to be an error of judgement on part of the forest officials in issuing damage report and filing of prosecution case in the Environment Court, Faridabad but was however, done in the interest of the Forest Department for protection of forest and discharge of its official duty.

In nut-shell, the note dated 08.10.2015 placed at flag "B" is correct, justified and on the basis of record produced by Conservator of Forests, South Circle, Gurgaon and Irrigation Department and thus it seems that in view of facts and position stated above, the orders dated 16.10.2015 issued by the PCCF, Haryana needs to be reconsidered.

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE



241

हरियाणा सरकार

297

Government of Haryana
Forest and Wildlife Preservation Department
New Secretariat Building, Haryana, Sector 17, Chandigarh-160017

The CRM number 34200 of 2012 filed by Sh. Raj Singh Gehlot S/o Late Sh. Nihal Singh is listed on 14.09.2016. At this stage, and adjournment may also be sought from the Hon'ble High Court. Thereafter, a correct position will be apprised before the Hon'ble High Court by filing afresh additional affidavit from this Department.

Vinod Kumar
Deputy Secretary Forests
12.09.2016

SSFt.

Level
W/ACSFT

As per the provisions contained in section 29 of the Indian Forest Act, 1927, the State Government may notify any forest land or waste land which is the property of Government, or over which the Government has proprietary rights, as protected forests. The nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land are required to be inquired into and recorded at a survey or settlement before issuing such notification. Thus, it is clear that privately owned land cannot be notified as Protected Forest.

Contrary to the provision of the IFA, 1927, Nathupur Bund in Gurgaon district has been notified as Protected Forest in 1981 although the land of this Bund is under private ownership. Ministry of Environment, Forest and Climate Change, Govt. of India has been requested for guidance as to whether State Government can withdraw such notification or whether such Protected Forest can be de-notified. In view of this Advocate General, Haryana may be requested to take adjournment in this case which is listed on 14.09.2016.

D. Hembram
D. Hembram
SSFt
12.09.2016

ACS Ft

Special Secretary Forest,
File No 718
Dated. 12-9-16

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE
Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE



As discussed, the facts of the case are as follows. As per the provisions of the Indian Forest Act, 1927, the State Government can notify any forest land or waste land which is the property of Government, or over which the Government has proprietary rights, as protected forests. The land under private ownership cannot be notified as protected forests. In order to avoid infringement on private property, the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein are required to be inquired into and recorded at a survey or settlement before issuing notification declaring such forest-land or waste-land as protected forests.

The Nathupur Bundh has been notified as protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 as per the provisions of the Indian Forest Act, 1927. The Bundh was constructed by Irrigation Department in 1950s. As per the revenue record or record of Irrigation Department, the lands of this Bundh belong to private individuals. These lands were never acquired by Irrigation Department and hence these are not the property of the State Government. Therefore, these lands owned by private individuals cannot be notified as Protected Forests as per the provisions of the IFA, 1927. There is no record to show whether there was a reference from Irrigation Department for notification of this bundh and whether the Department undertook plantation after the notification. As informed by W/ACS, Forest, the matter was discussed with Sh. D. K. Sinha IFS, Inspector General of Forests, MoEFCC, Govt. of India in presence of PCCF and Conservator of Forests (South Circle), Gurgaon. It was pointed out that Nathupur Bundh has advertently/inadvertently been notified as Protected Forests although the lands belong to private Individuals. Sh. D. K. Sinha is of the view that this will be a case of withdrawal of notification, not the case of diversion under the Forest (Conservation) Act. The notification under Section 29 of the IFA, 1927 was issued declaring these lands as Protected Forests although these lands do not belong to the State Government, rights of private persons not inquired and recorded, and report from Irrigation Department was not taken before issuing notification.

Some of the lands comprising Nathupur Bundh are owned by M/s. DLF. In 2002, DLF submitted a proposal for de-notification of Nathupur Bundh as Protected Forest. Forest Department although agreed, in principle, de-notification could not be done due to the facts that ownerships of these lands lied with other private individuals. DLF obtained information from the Irrigation Department about Nathpur bandh measuring 4.59 ha comprising Khasra No. 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159. The company applied for diversion of 2.2 ha land under the Forest (Conservation) Act, 1980 comprising following Khasra No. 437, 430, 119, 118, 117, 97, 96, 94, 93, 151, 153, 157 which are owned by the company. The Govt. of India, MoEF accorded approval for diversion of 2.2 ha of forest land to DLF.

M/s Ambience Developer and Infrastructure Pvt. Ltd and its Associate Companies own lands in village Nathupur. Forest Department issued a damage



from page 2

report (DR) No. 29065 dated 14.05.2008 against Mr. Raj Singh Gehlot for illegal breaking of protected forest land in Nathupur Bundh in Gurgaon district for construction works by M/S Ambience Developer and Infrastructure Pvt. Ltd. and the offence case was sent for prosecution in the Hon'ble Environment Court, Faridabad in 2008-09. Sh. Raj Singh Gehlot has filed an application CRM No. 34200 of 2012 in the Hon'ble High Court of Punjab and Haryana for quashing the damage report. DFO, Gurgaon in written reply submitted before the Hon'ble High Court has stated that the lands bearing Khasra No. 531, 533 and 535 are part of Nathupur Bundh and was cleared illegally for construction of Ambience Lagoon Apartment.

Ambience Infrastructure and Developers Pvt. Ltd. had applied for diversion of 0.4486 ha forest land bearing Khasra No. 526, 533, 534, 535, and 536 under the Forest (Conservation) Act, 1980. The company has stated that it has applied for diversion of forest land under the FCA, 1980 on the request of senior officers of the Department to settle the long pending issue. In fact, Commissioner and Secretary, Forests and Principal Chief Conservator of Forests, Haryana in a meeting held under the Chairmanship of Chief Minister in 28.04.1992 informed that this area was not a notified reserved forest under the Indian Forest Act and Department had no programme of planting forest on this land.

On a representation submitted by Ambience Developers and Infrastructure Pvt. Ltd., Sh. S. S. Jattan IFS, earlier PCCF, vide letter 16.10.2015 held that land bearing Khasra No. 526, 533, 534, 535, and 536 for which the company applied under the FC Act, 1980 is not a forest land. PCCF has stated as under:

The representation of M/S Ambience Developer and Infrastructure Pvt Ltd was analysed to find out the facts on the issues involved. The subject matter of the representation is against the imposition of penal compensatory afforestation (Penal CA) cost on the proposal for diversion of forest land of Nathupur bundh in the village Nathupur Gurgaon. Mr. Rajeshwar Deshwal representing M/S Ambience Developer and Infrastructure Pvt Ltd personally submitted documents to prove that the area applied for was not a forest land and the application under FCA was submitted on the advice of senior officers of the forest department because a damage report for violation under Indian Forest Act 1927 was issued against Mr. Raj Singh Gehlot, CMD, M/S Ambience Developer and Infrastructure Pvt Ltd and prosecution case has been filed in the Environment Court, Faridabad. His main contention was that the Sikandarpur-Nathupur bundh was in fact situated on land possessed by DLF and its Associate Companies and the forest land measuring 2.2 hectare has already been diverted in favour of DLF on 4.4.2007. it was argued that the land belonging to M/S Ambience Developer and Infrastructure Pvt Ltd and its Associate Companies has Khasra numbers which does not belong to the Sikandarpur-Nathupur bundh as per the information supplied by the Irrigation Department in 2002 for de-notification of the Sikanderpur-Nathupur bundh which had lost its relevance due to development in and around Nathupur, Gurgaon. After verifying facts from records, it

*S/ + - (C)
or
File - I*

*★
Flag - B*

★



from pre-page 1

- 244

हरियाणा सरकार

was discovered that D.F.O Gurgaon had written to Conservator of Forests, Gurgaon vide letter no. 1117 dated 24.12.2002 to de-notify the bundh area falling in the Nathupur village. CF Gurgaon further informed the CCF (protection), Haryana vide letter no. 252 dated 6.5.2003 that the entire Nathupur bundh falls in the revenue estate of Nathupur village and as per revenue record owned by private individuals khasra no. length etc. CF Gurgaon reported that the length of the bundh was 9500 feet (2.85 km) and width was 52 feet and area was calculated as 11.34 acre (4.59 hectare). As per deforest record of Gurgaon Forest Division, the length of the bundh was 2.56 Km (8.25 rd) and the width was 30 feet with area of 2.26 hectares.

Khasra no. of Nathupur bundh as reported by the Irrigation Department are :- 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, 159.

For the purpose of regularization of unauthorised forest diversion by M/S Ambience Developer and Infrastructure Pvt Ltd the proposal for the diversion of part of Nathupur bundh PF under FCA measuring 4486 Sq mtrs passing through khasra no. 526,533,534,535, and 536 was submitted. On analyses it has been discovered that these khasra no. applied for are not mentioned in the report of the Irrigation Department submitted in 2002 as part of Nathupur bundh and therefore lands bearing 526, 533,534,535 and 536 khasra numbers are not forest land notify under Indian Forest Act 1927 and the damage report issued for violation of IFA on this land is not tenable.

Accordingly the damage report (DR) no.29065 dated 14.5.2008 issued against Mr. Raj Singh Gehlot is hereby cancelled and the DFO (T) Gurgaon is directed to withdraw the prosecution case no 7G/08-09 with the permission of the Hon'ble Environment Court, Faridabad. The FCA case FR/HR/others/13983/2015 submitted by M/s Ambience Developer and Infrastructure Pvt Ltd is hereby cancelled as withdrawn since no forest land is involved.

Subsequently, incumbent PCCF based on the report submitted by DFO, Gurgaon and CF, Gurgaon informed the Govt. that the land in question bearing Khasra No. 526, 533, 534, 535, and 536 is in fact forest land and the letter dated 16.10.2015 in which it is stated that the land under reference is not a forest needs to be treated as *non est*. The relevant noting of PCCF in this matter is reproduced as under:

Deputy Conservator of Forests, Gurgaon on 03.11.2015 sent a note to CF (South) which was forwarded to CCF (Protection-II) which was then brought to the notice of the O/o PCCF, Haryana certain pertinent observations and suggestions in the present case for consideration. The observations and suggestions submitted by the Deputy Conservator of Forests, Gurgaon were made in reference to the letter no. NT/D-III-6381/4344 dated 16.10.2015 sent by the then Principal Chief Conservator of Forests, Haryana, as discussed above.

File - IV
Note page
10 (14)

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE



from page 1

The Deputy Conservator of Forests, Gurgaon submitted the following contentions with regard to the aforementioned letter dated 16.10.2015:

- (7) That the Sikanderpur-Nathupur Bundh is a protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 and thereby the provisions of Indian Forest Act and Forest Conservation Act are applicable in the said area. The accused have in the present case carried out unauthorized constructions leading to the destruction of forest area and thereby violated the Indian Forest Act, 1927 and the Forest Conservation Act, 1980.
- (8) DCF, Gurgaon further submits that satellite images of the land in question of the year 2000 clearly shows Sikanderpur-Nathupur Bundh as a continuous linear feature with linear arrays of trees on both sides. The longitudinal section of the Bundh as obtained from the Irrigation Department reveals that the total length of this Bundh is 9500 Feet which is 2.895 Km and this is further corroborated by the measurement of 2.87 Kms. based upon satellite imagery.
- (9) Superimposition of geo-reference sajra onto the satellite imagery clearly reveals that the bundh is passing through the Khasra numbers 531, 533 and 535, and the fact that this land is also a part of the land on which Ambience Lagoon apartments now stand constructed highlights the destruction of a stretch of Protected Forest.
- (10) In addition to the aforementioned the Deputy Conservator of Forests, Gurgaon has also mentioned that time tagged imageries of the site in question clearly reveal the presence of the Bundh/Protected Forest during the year 2000/2002 and the exact geo-space is being occupied by the constructed buildings. This clearly and photographically establishes the physical fact of violation of IFA, 1927, be it in whichever Khasra number.
- (11) The Deputy Conservator of Forests, Gurgaon has also cited letter no. 1109 dated 27.04.1992 issued by DTP, Gurgaon which clearly states the existence of a bundh in the area pertaining to license number 19 of 18.98 acres, i.e. the present area.
- (12) It has also been mentioned by DCF, Gurgaon that the aforementioned evidence has already been placed on record before the Hon'ble Punjab and Haryana High Court in CRM No. 34200 of 2012 - Raj Singh Gehlot v. State of Haryana and others.

The Deputy Conservator of Forests, Gurgaon goes on to submit that in light of the aforementioned the decision taken to withdraw the ongoing prosecution case no. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section of Indian Forest Act, 1927 against Mr. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/Forest Conservation Act, 1980 needs to be reviewed.

The observations of the Deputy Conservator of Forests, Gurgaon have further found corroboration in the noting of Additional Principal Chief Conservator of Forests (Forestry) dated 27.11.2015 in which it has been remarked that: "As instructed by worthy PCCF, undersigned visited the location in Gurgaon. The bundh in question physically exists on both sides of building, which is bone of contention..."



from pre-page 2

- 34246

हरियाणा सरकार

In addition to the aforementioned it has come to be seen that in the noting of CF (FC) reference has been made to Khasra numbers 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 151, 153, 165, 154, 157, 158, 159 being reported as Nathupur Bundh and thereby implying that any other khasra number would not be a part of the bundh. This seems to have been done inadvertently. As it may be seen that since the total possible linear length of the bundh by including all these khasra numbers in alignment in the direction of the bundh, i.e. between khasra number 159 to 436, comes to only 5874 ft. However, the total length of the bundh has been measured at 9500 ft and the same is undisputed. Thus, 3626 ft. of the Bundh should accordingly lie outside the aforementioned Khasra numbers.

Letter dated 27.04.1992 of DTP, Gurgaon clearly states that there is a bundh in the area, i.e. on the land in question comprising khasra no. 2,3,4,5,527,528,529,530,531,532,533,534,535.

Therefore, in light of the aforementioned submissions and observations, preponderance of evidence suggests that the land in question is forest land. The letter no. NT/D-III-6381/4344 dated 16.10.2015 issued by PCCF, Haryana in which it is stated that land under reference is not a forest land needs to be treated as *non est*.

The matter was discussed with OSD to the Hon'ble Chief Minister, Haryana and Additional Advocate General, Haryana on 06.11.2015 at Chandigarh wherein it was advised that the file may be submitted for the advice/orders of Ld. Advocate General, Haryana.

Keeping the above in view, the file is submitted for the following considerations:

- (iv) The letter no. NT/D-III-6381/4344 issued by the then Principal Chief Conservator of Forests, Haryana dated 16.10.2015 need to be treated as *non est*.
- (v) The case of the user agency for diversion may be processed as per law.
- (vi) The case may be allowed to reach its logical conclusion.

After considering the case, the Govt. vide letter dated 15.01.2016 directed PCCF to withdraw letter dated 16.10.2015 and PCCF vide letter dated 19.01.2016 has withdrawn the letter dated 16.10.2015.

Subsequently, Alankar Apartments Pvt. Ltd. and Sara Estate Pvt. Ltd., Associate Companies of Ambience applied for issuance of clarification regarding applicability of forest laws on their lands located at village Nathupur district Gurgaon. Alankar Apartments Pvt. Ltd. has sought clarification regarding land measuring comprising Khasra Nos. 448, 449 and 526 while Sara Estate Pvt. Ltd. with regard to their land bearing Khasra Nos. 536, 537, 538, 541, 543, 544, 562, 563, 564, 539, 540, 542, 545, 546, and 561. DFO, Gurgaon vide letter dated 08.09.2015 has informed M/s. Alankar Apartments Pvt. Ltd. the company that Khasra No. 526 is part of protected forests wherein the provisions of the Forest (Conservation) Act, 1980 are applicable. DFO, Gurgaon vide letter dated 06.11.2015 has informed M/s. Sara Estates Pvt. Ltd. that the company has applied for diversion of forest land under the FCA and till the approval of MoEF is not obtained, no further clarification can be given in this

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE

File - IV
Page 38-c)



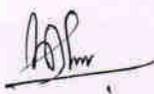
regard. DFO, Gurgaon vide letter dated 21.03.2016 has further informed Conservator of Forests, Gurgaon that the said matter is the subject matter of case CRM No. M-34200/2012 pending for adjudication before the Hon'ble High Court and as the matter is sub-judice, no further clarification can be issued.

There are two issues involved in this case. First, the Nathupur Bundh has been notified as protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 as per the provisions of the Indian Forest Act, 1927. As per record, the lands of this Bundh belong to private individuals. These lands were never acquired by Irrigation Department and hence these are not the property of the State Government. Therefore, these lands owned by private individuals should not have been notified as Protected Forests as per the provisions of the IFA, 1927. However, the Bundh has advertently/inadvertently been notified as Protected Forests without inquiring and recording the rights of private persons and without report from Irrigation/Revenue Department. Second, there is ambiguity with regard to Khasra Numbers of Nathupur Sikanderpur bundh and the Department does not have records of Khasra number of the land. According to earlier PCCF, Nathupur bundh comprises Khasra No. 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158 and 159. These Khasra numbers were provided by Irrigation Department. The Irrigation Department had written to DFO, Gurgaon vide letter dated 27.08.2002 to give permission for abandonment and leveling of the bundh in question and for issuance of certificate that the bundh in question does not fall in the category of Reserved Forest and NOC to this effect be issued. It has been stated that the land of the bundh does not belong to Irrigation Department but is under the private ownership. Then PCCF has indicated that a comparison of the khasra numbers provided by the Irrigation Department to DFO, Gurgaon for permission for leveling Nathupur Bundh, which was later recommended by Conservator of Forests shows that the entire bundh measuring 2.85 km with khasra details does not pass through khasra numbers and area owned by M/S Ambience Developer and Infrastructure Pvt. Ltd for their project named Ambience Islands. On the other hand, the incumbent PCCF has concurred with DFO, Gurgaon who has stated that there is a bundh on the land in question comprising khasra no. 2, 3, 4, 5, 527, 528, 529, 530, 531, 532, 533, 534, and 535. Further, DFO, Gurgaon has determined Khasra No. 531, 533 and 535 as parts of the bundh based on geo-reference map prepared on Google imageries of 2000 after superimposing with Sajra on which Ambience Lagoon Apartment has been constructed. The construction of this apartment started in 1996 and

completed in 2001. The geo-reference map has been prepared by the Department itself, not by any specialized agency. Sh. Prem Prashant, GIS Analyst O/O. PCCF, Haryana has informed that satellite data of 200 being experimental in nature may not be accurate and the geo-reference map prepared on Google imageries of 2000 after superimposing with Sajra may lead to substantial error.

As far as area of the Bundh is concerned, there are few contradictions. The Nathupur Bundh was notified as protected forest u/s 29 of the Indian Forest Act, 1927 on 02.12.1981 by the Forest Department assuming the same to be government forest land. The specifications of Nathupur Bundh forest land is recorded in the forest records of Gurgaon Division as follows: 0-8.25 RD; 2.51 km long; 30 ft wide; Area 2.26 hectare. The DLF applied for diversion of 2.2 ha forest land of Nathupur Bundh under the Forest (Conservation) Act, 1980 comprising following Khasra No. 437, 430, 119, 118, 117, 97, 96, 94, 93, 151, 153 and 157 which are owned by the Company. The Govt. of India, MoEF accorded approval for diversion of 2.2 ha of forest land to DLF in 2007. Thus, there is only 0.06 ha forest land left after diversion in favour of DLF. However, the forest area mentioned in damage report issued to Sh. Raj Singh Gehlot is 380 m x 16 m i.e., 0.6080 ha. Further, M/s. Alankar Apartments Pvt. Ltd. And Sara Estate Pvt. Ltd. have sought clarification regarding non-applicability of forest laws on land measuring 7.25 acres (2.93 ha) and 12.01 acres (4.86 ha) respectively.

Accordingly, the case is submitted to Government for taking appropriate decision in this matter.


D. Hembram
SSFt
30.09.2010

ACS Ft

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE

flag-S
In the matter under reference DFO Gurgaon has issued a damage report bearing No.29065 dated 14.5.2008 against Sh. Raj Singh Gehlot claiming violation of forest laws on a stretch of 380 mtr.X 16mtr. =6080 and it is alleged that he has constructed Lagoon Apartments on the said land. After the damage report DFO Gurgaon has filed a challan thereby initiating prosecution proceeding against Sh. Raj Singh Gehlot in the Environment Court, Faridabad against which Sh. Raj Singh Gehlot filed a petition before Hon'ble High Court of Punjab and Haryana, Chandigarh bearing No. CRM 34200 of 2012 for quashing the Challan in Environment Court, Faridabad wherein a stay of the proceedings of the Environment Court, Faridabad was ordered and the matter is pending adjudication at present before Hon'ble High Court.

flag-R
The main cause of the dispute is that Forest Department has claimed the land owned by Ambience Group of Companies as the part of protected forest which is alleged by the Land owner to be contrary to provisions of section 29 of India Forest Act, 1927 and also contrary to the protected forest notification issued by Govt. of Haryana No.A.O.251/C.A.16/27/5.29/81 dated 2.12.1981.

The brief history and facts of the case are as under:-

flag-Q
That section 29 of Indian Forest Act, 1927 empowers State Government to issue protected forest notification and declare forest land or wasteland nor being a reserved forest but are property of the Govt. or over which Govt. has proprietary rights. Furthermore, no such notification shall be made unless the nature and extent of right of the Government and the private persons vis-s-vis the forest land or waste land comprises therein has been inquired into and recorded at a survey or settlement and the land to be notified as protected forest will not abridge or affect any existing rights of individuals or communities. In exercise of the powers conferred by section 29 of Indian Forest Act, 1927, the Government of Haryana issued Protected Forest Notification No.A.O.251/C.A.16/27/5.29/81 dated 2.12.1981 wherein the Nathupur Sikanderpur bundh was notified as protected forest without conducting any survey or settlement as mandated by law as laid down under Section 27 of the Indian Forest Act, 1927. Before this notification by the Forest Department was issued the Department has neither received by request or communication from Irrigation Department to notify Nathupur Sikanderpur Bundh as protected forest nor the Forest Department has made any interdepartmental inquiry about the ownership of the land comprising of Nathupur Sekanderpur bundh. The Forest Department has taken a suo-motto discretionary decision for the same and notified Nathupur Sikanderpur Bundh as Protected Forest.

For this administrative deficiencies as stated above the Forest Department does not mention the details of the land in the form of Khasara numbers from the revenue records as comprised of the Nathupur Sekanderpur Bundh and after the notification the Forest

From pre page

Department has neither taken the possession of the notified area nor proceeded with any kind of plantation on the land and moreover the Department is duty bound to get the entries recorded in Revenue record pertaining to the Protected Forest but have failed miserably in doing so and till date no entry pertaining to the Protected Forest over Nathupur Sekanderpur Bundh is found in the revenue records.

Since the issue of the Notification in 1981 till 2002 the Forest Department could not claim any land comprised in the Nathupur Sikanderpur Bundh due to the vagueness regarding the details of the Protected Forest and thereafter in the year 2002 Irrigation Department furnished a letter to Divisional Forest Officer, Gurgaon wherein it was categorically stated that the land on which Nathupur Sikanderpur Bundh was constructed is not owned by Irrigation Department rather is the property of private owners and the specific details vide Khasra No. on which the bundh was constructed were provided and the specific dimensions and are of the bundh was also mentioned in the letter by the Irrigation Department.

The Forest Department accepted the submission of the Irrigation Department as furnished in the letter of 2002 and though the land was not owned by Government hence the then DFO Gurgaon forwarded the proposal for de-notification of all the khasra numbers on the basis that all the khasra numbers are owned by private owners and private land cannot be notified as protected forest. The said proposal of De-notification was forwarded to the office of PCCF by the then Conservator Gurgaon and at the time of scrutiny of the proposal of de-notification the office of PCCF raised certain queries and in reply to the queries the then Conservator of Forest, Gurgaon admitted that the Nathupur Sikanderpur Bundh falls in the revenue estate of village of Nathupur and as per the revenue record it is the property of private owners and further clarified that Khasra Nos, length and breadth of bundh are shown in jamabandhi and were annexed along with letter of DFO dated 25.3.2003 and again recommended the de-notification proposal submitted by DFO, Gurgaon. It may also be noted that the Khasra Nos. as mentioned in the letter of the Irrigation Department and duly accepted by the Forest Department to be the part of Nathupur Sikanderpur Bundh did not include any of the khasra numbers owned by the Ambience Group of Companies.

However, in the year 2008 the Forest Department issued the Damage Report bearing No.29065 dated 14.5.2008 against Sh. Raj Singh Gehlot in his individual capacity and claimed the violation of Forest laws on a strip of 380X 16 mtrs.=6080 Sq mtrs (area) by alleging that he had constructed the Lagoon Complex on the forest land after its clearance. Thereafter, the then DFO Gurgaon initiated the prosecution case on 21.8.2008 against Sh. Raj Singh Gehlot in the Environment Court, Faridabad. It may be important to observe that after the initiation of the prosecution before the Environment

From prepage

Court, Faridabad on 21.8.2008 the then DFO, Gurgaon again issued the show cause notice dated 15.5.2012 being no.10G for retrieval of the forest land.

Aggrieved by the prosecution initiated by the Forest Department Sh. Raj Singh Gehlot filed a petition being No.CRM 34200 of 2012 before the Hon'ble High Court of Punjab and Haryana, Chandigarh which is pending adjudication till date. In the said petition CRM 34200 of 2012, Sh. Harish Walia, DFO, Gurgaon filed a written statement in Hon'ble Punjab and Haryana High Court and his main submissions were that the land under dispute is owned by Irrigation Department and the documents pertaining to the ownership are available with the Irrigation Department. Secondly, that the bundh was passing through khasra nos. 531,533 and 535 on which Sh. Raj Singh Gehlot violated the Forest laws. It was stated on the basis that the satellite imagery 2000 after being super imposed upon the sajra of Nathupur Sikanderpur village reveals that the bundh is passing through Khasra Nos.531,533 and 535 and the length of Bundh is 380 mtrs. Breadh 16 mtrs and area 6080 Sq. mtrs.

Thereafter in 2015 the matter came to the notice of the then PCCF, Haryana and after the scrutiny of the record passed a speaking order and declared that the land owned by Ambience Group of Companies is not a forest land and the damage report was cancelled, thereby directing the DFO, Gurgaon to withdraw the prosecution case against Sh. Raj Singh Gehlot pending before the Environment Court, Faridabad. The order of the then PCCF, Haryana was contradicted by DFO, Gurgaon and a proposal for the withdrawal of order of the then PCCF was forwarded to the Principal Secretary, Forest and the Government has withdrawn the order of the PCCF vide letter dated 19.1.2016

File No. 1
(C-120)
F-ly-A
It may further be noted that M/s Ambience Developers and Infrastructure Pvt. Ltd. had submitted a representation dated 6.1.2016 for implementation of the order of PCCF, Haryana dated 16.10.2015. The representation is still pending with the Government and thereafter Ambience Developers and Infrastructure Private Ltd. has also submitted several representations requesting the implementation of the order of PCCF, Haryana dated 16.10.2015

Now that I have gone through the case and scrutinized the record available with the Department and also submitted by the Ambience Developers and Infrastructure Pvt. Ltd. along with their representation. I have gone through the relevant provisions of the Indian Forest act, 1927, the Protected Forest Notification dated 2.12.1981, Haryana Forest Manual, Litigation Policy 2010 of Government of Haryana and having discussed the matter with PCCF, Haryana and other officials of the Department and offered ample opportunity of hearing to all concerned. Before arriving at the below mentioned observations, I have also perused the observations of Deputy Secretary Forest and Special Secretary Forest which also substantiate the claim of the petitioner/representist.

After scrutinizing the entire facts in totality from the above, the following issues have emerged :-

Notification issue - The Forest Department had issued the notification in 1981 which is in total contravention of the Indian Forest Act and is clear that the notification has been issued inadvertently without any request or communication from the parent department (Irrigation Department). The issue has been discussed at length in the forgoing paras. The Forest Department is covering its wrong doing by taking protection of the Hon'ble Supreme Court order dated 12.12.1996 which reads as

“The term “forest land”, occurring in section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership”.

Further the Hon'ble Supreme Court states that each State Government should constitute within a month an Expert Committee to:

- Identify areas which are “forest”, irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land as such forest;
- Identify areas which were earlier forests but stand degraded, denuded or cleared; and
- Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

If one carefully reads the Hon'ble Supreme Court order, to my mind, then following interpretation emerges:-

Government record- To my view Govt. record means Revenue Record. If by mistake Forest Department notifies a farmer's field as protected forest and this field has never been under forest in the past and also no forest now (means no plant was ever planted or is planted) then Hon'ble Supreme Court order is not attracted on this particular piece of land.

- 93
- 2004
- a) The Forest Department woke up and raised this issue after a gap of 15-16 years which is a huge gap which smells foul.
 - b) The Khasra numbers supplied by the Irrigation Department regarding bundh do not match with the Khasra numbers given by the Ambience Developers, then a new development of Google Imageries has been introduced by DFO Gurgaon. The DFO Gurgaon supported by his seniors prepared a Geo-reference Sajra on Google imageries, which is explained in one of the paras

given below.

- c) The former PCCF, after examining the entire facts/records of the office passed an order for cancelling the damage report which has been rebutted by the DFO Gurgaon and his senior officers including the present PCCF.

The protected forest notification whereby the Nathupur-Sikanderpur Bundh was declared protected forest was issued on 2.12.1981 and as per the provisions of Section 67 of the India forest Act 1927 imprisonment of one year is prescribed for the violation of the Act and as per Section 468 of CrPC the cognizance of offence could be taken only within period of one year i.e. till 2.12.1982 rather in the present case the Forest Department has issued the damage report in the year 2008 and initiated the prosecution in Environment Court after a gap of 15-16 years which is highly time barred and therefore is un- understandable and unjustified.

Taking into consideration the submissions of the DFO, Gurgaon in his written statement filed in the year 2014 in CRM No.34200/2012 before the Hon'ble High Court it has been observed that complete material facts have not been given. As per their version the land under dispute is owned by the Irrigation Department and all the relevant documents of ownership are with Irrigation Department, inspite of the fact that Irrigation Department has informed DFO, Gurgaon in the year 2002 that the land on which the bundh was constructed is private ownership land and is not owned by Irrigation Department. Secondly, DFO, Gurgaon has claimed in his written statement that he is claiming the disputed land of Khasra No.531,533 and 535 on the basis of Satellite imagery of 2000 which is inappropriate as the reliance placed on the same is out of the scope of the provisions of the Act. It appears that when Khasra Nos. of developer do not match with the Khasra Nos. supplied by Irrigation Department, the department is playing tactics in switching over to the satellite imageries.

However, M/s Ambience Developers & Infrastructure Pvt. Ltd. vide its representation dated 23.8.2016 has rebutted the DFO's proposition of Google Imagery, wherein it has sought a scientific report from an NABL accredited Laboratory to ascertain the veracity of the claim of Google Satellite Imagery made by the Forest Department, but the report of the M/s Vardan Enviro Net, NABET Accredited EIA Consultant, NABL accredited and MoEF & CC recognized Laboratory, provides that from the observation of the Satellite Google Imagery 2000 of the Lagoon Apartment Complex, Ambience Island, NH-8, Gurgaon, the area as marked by the coordinates shows that no bandh was in existence on the said land at that point in time. Moreover, it has been observed that DTCP, Haryana issued licence no 19 of 1993 dated 9.07.1993 to the builder for development of group housing. The builder got the building plans sanctioned in the year 1996 for development of group housing on the land comprising in Khasra No.3min north(0-12=0),529 South West (1-16-0),534(6-18-0),530(0-4-0),531(5-8-0),532(0-8-0),533(0-2-0),535(1-15-0),2/2/1(0-8-11) in the revenue estate of village

Nathupur, Gurgaon. Therefore, the group housing complex was undertaken in 1996 and was completed in 2001 and the occupation certificate was issued by DTCP, Haryana in 2001. Special Secretary Forest in his note has also contradicted the stand of DFO. Hence by virtue of the submissions above the contention of the DFO with respect to the Google imagery of 2000 appears to be baseless without any scientific study as an imaginative exercise.

Although the position in totality about the case has been explained for the sake of understanding the entire issue/chronology of events, but the issue in question which needs to be decided is as follow:-

Order of the PCCF dated 16.10.2015:- I have examined the detailed note (noting page 1-5) prepared by Mr. D.K. Sinha, the then Conservator Forest (FCA) in the office of PCCF, Haryana Panchkula who has dealt all aspect of the matter and I am of the considered opinion that in the note he has explained all the issues in detail and the order was passed on merits. But the DFO, Gurgaon has placed the objections and moved a case for withdrawal of the order of the then PCCF dated 16.10.2015 to withdraw the order of the PCCF without considering the facts and merit of the case.

DFO Gurgaon, Conservator of Forests Gurgaon and the new incumbent PCCF, have challenged the jurisdiction of the then PCCF regarding the withdrawal of the case, Whereas the then PCCF passed an order dated 16.10.2015(flag 'A') based on record and facts available in his office thereby making it clear that the land owned by Ambience Group of Companies is not part of Nathupur Sikanderpur bundh which is notified as protected forest and when the land is not a forest land then the damage report issued against the Developer is not tenable. I am of the view that PCCF was fully empowered to issue any instruction on the issue under section 2.1(vi) of Haryana Forest Manual and in the said order has exercised his power in a judicious manner and rectified the wrong done by a subordinate officer of the Department.

The last but not the least, it is interesting to note that the DFO(T), Gurgaon prepared a damage report of an area totaling 0.6080 hectare against the Ambience Developers, whereas the total area of the bundh as per record is 2.2600 hectares and the DLF has already taken diversion of an area of 2.2000 hectares, meaning thereby the left out area of the bundh is 0.0600 hectare, leading to a conclusion that the damage report against the Ambience Developers is more than the area of the bundh left out which comes to 0.5480 hectare whereas the left out area of the bundh after DLF diversion area is only 0.0600 hectare hence on this ground also the claim of Forest Department is beyond all parameters of the merit which clearly reflects the whims and fancies of the DFO, Gurgaon and his seniors..

However, taking into account the prevailing atmosphere of complaints and inquiries, I am still duty bound to place entire position before the Government. Based on

From prepage

facts and circumstances available in the record/file, it appears that the developer has unnecessary been harassed to a great extent and pulled into unnecessary litigation for which departmental officials are solely responsible. In my view, it is clear from the sequence of events that the whole issue appears to be a classic case of 'OFFICIAL DADAGIRI'.

Since the matter is under adjudication in the Hon'ble High Court, Ld. Advocate General, Haryana may be requested to tender his/expert opinion, if necessary, on following issue:-

Whether the order of PCCF dated 16.10.2015 be implemented?

OR

Whether entire facts be placed before the Hon'ble High Court for a decision on merit and also to take cognizance of facts/ sequence of events which led to this controversy and let the guilty be punished whosoever be.

For orders please.

Chief Minister Secretary
Haryana
File Receipt No. 47328
26/10/16

CFMS-2319
14-X-16

O/o Public Works (B&R), Forests,
Architecture and Civil Aviation Minister,
Haryana, Chandigarh.
Diary No. 2319
Dated 26/10/16

Forests Minister

(R.R.Jowel)
ACS Forest
13.10.2016

C PSCM
No. (F) 47, 2016
Date 26/10/2016

C.M.

25-10-16
Rao Narbir Singh
Forests Minister,
Haryana, Chandigarh

C.M. would like to have the
benefit of advice of A.J. please.

Ah Kells
9.11.16

A.J.

Mr. Gurbal Singh
Addl. Dy. Insp.

26/10/2016
9.11.2016

Legal Opinion

The opinion of the O/o The Advocate General has been solicited to address two queries/issues raised by the ACS Forest vide letter dated 13.10.16.

These are: -

i) *Whether the order of PCCF dated 16.10.15 be implemented?*

OR

ii) *Whether entire facts be placed before the Hon'ble High Court for decision on merit and also to take cognizance of facts / sequence of events which led to this controversy and let the guilty be punished whosoever be?*

Upon perusal of the case file and going through the relevant records, documents, letters and files as have been made available to the office of Ld. Advocate General, Haryana, the following facts emerge in the instant case:

1. That the Sikandarpur-Nathupur bandh was constructed by the Irrigation Department in 1950-52. This was proposed and built to check the floods in 1950. That as per letter dated 27.8.2002 of the Irrigation Department to the Divisional forest Officer, Gurgaon, which was in response to the issuing of a no objection certificate for the abandonment and leveling of the earthen bandh located in the revenue estate of village Nathupur - it was stated by the Irrigation department that this bandh was built to safeguard habitation and village abadis from the fury of floods but owing to the rapid urbanization on both sides of the bandh, it has lost its original purpose and utility. It also transpired from the letter of the Irrigation Department that the Sikandar-Nathapur bandh is on land comprising Khasra No. 436, 460, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158 and 159 and was never constructed on land belonging to M/S Ambience Developer and Infrastructure Pvt. Ltd. specifically the disputed khasra nos. 531, 533 and 535. The details/specifications of Sikanderpur-Nathupur bandh as recorded in forest department records, Gurgaon Division are: -

Length: 0 - 8.23 RD (2.51 km) 30 ft. Wide Area: 2.26 hectares

Furthermore, Annexure - 2 in file no. III available with us, is a detailed map of the bandhs in Gurgaon Irrigation Division dated 22.12.1962, wherein the Sikanderpur-Nathupur bandh is shown at Sr. no. 82 and the length is given as 8,250 feet, which matches the above mentioned entry in the Forest department records. It is also important to note here that as per records available on file with the office of Advocate General, MOEF, Government of India has already accorded approval for diversion of 2.20 hectares of forestland of the said bandh to M/S DLF leaving only 0.06 hectare balance area of this bandh land as Protected Forest according to Forest as well as Irrigation department's records as mentioned in the file/s and observed above. However, it is also observed from the records available that CCF(Protection), Haryana vide letter no. 252 dated 6.5.2003 informed that the entire Nathupur bandh falls in the revenue estate of village Nathupur and the length of this bandh is 9,500 feet (2.85 km) and width is 52 feet and the area under it is 4.59 hectare. This is at complete variance qua the length, width and area with the aforementioned original Forest department as well as Irrigation department records!

- 2) That this Sikandarpur-Nathupur Bandh was notified u/s 29 of Indian Forest Act, 1927 as "Protected Forest" vide notification dated 2.12.1981. It is pertinent to mention here that in the said notification no specific khasra no. were mentioned and only the names of the roads, canals, watercourses, major & minor drains, bandhs etc. are generally mentioned therein. It is also relevant to mention here that the Sikandapur-Nathupur bandh, constructed by the Irrigation department, was a part of the notification dated 2.12.1981 declaring it to be a protected forest.
- 3) That a meeting was held on 28.4.1992 under the Chairmanship of the then Chief Minister at Chandigarh to discuss the proposed amendments in the Draft Development Plan, Gurgaon. Upon going through the minutes of the meeting held on 28.4.1992 which was held to discuss about the Draft Development plan of Gurgaon, it transpired that: -

"Draft development plan for Gurgaon, which was prepared by Department of Town and Country Planning in 1982 in which area about 260 acres along Delhi Haryana Border to show as reserved for forests mainly due to two reasons:

- i. A green buffer was kept on the border as suggested in Delhi Master Plan.*
- ii. The land was uneven in topography and was dissected by Nallahs and creeks. "*

During the discussions, the then Commissioner and Secretary (Forest & Environment) and the then Principal Chief Conservator of Forest clarified that this area is not a notified reserved forest under the Forest Act and that they have no program of planting forest on this land.

The following decisions were also taken: -

"After due deliberations it was decided that the area that had been for forest in 1982 development plan should be converted into special zone with recreation and commercial, group housing and institutional use as permissible for this zone. "

It was also mentioned in the said meeting that each individual party who applies for the change of land use (CLU) and approval of the building plans will have to take the topographical conditions into consideration and make proper arrangements for the storm water drainage and disposal etc. These aspects will be examined in detail by the competent authority at the time of approval of any scheme. Meaning thereby that all aspects like defense, drains, nallahs, scheduled roads etc. must be dealt with in detail at the time of approval of CLUs.

- 4) That license no. 19 of 1993 was granted to M/s Ambience Developers and Infrastructure Pvt. Ltd by the Town and Country Planning department for setting up of a group-housing colony at village Nathupur, Tehsil & Dist. Gurgaon. It is also pertinent to mention here that as per the details of the land annexed and available on record, the khasra nos. 531, 533, 535 are part of the land for which this licence was granted. That, subsequently

buildings plans were approved and the licensee must have undertaken construction in order to execute the project as per the license. Thereafter, presumably upon completion of the project, the Town and Country planning department issued the occupation certificate (OC) to the licensee on 31.12.2001.

- 5) That in the year 2008, after the lapse of 7 years from grant of OC, a damage report pertaining to Khasra No. 531, 533 and 535 was filed for violations under the Indian Forest Act, 1927 and the Forest Conservation Act, 1980, against Mr. R. S. Gehlot.
- 6) That a petition for the quashing of the said damage report filed vide CRM No. 34200/ 2012, which is still pending in the Hon'ble High Court. The next date in this case is 19.12.2016.
- 7) That upon perusal of the reply filed in CRM 34200 of 2012 by the Forest Department, it came to notice that on one hand the department has supported its line of action to file the Damage Report claiming it to be the forest land which was allegedly put to non-forestry use and thus amounted to an offence punishable under IFA, 1927 and FCA, 1980 but on the other hand it submitted that the ownership of the said bandh vests with the Irrigation department and the details of khasra nos. on which the bandh existed was not with them but with the custodian department that is the Irrigation department. It is very relevant to mention here that the Irrigation department has, on record, denied having the ownership of the said land and further stated that the bandh never existed on the impugned khasra nos. for which the damage report was filed. Furthermore, the Forest department also relied upon GIS (geographical information system) and the methodology adopted was that satellite imagery of Google Earth for the year 2000 of the Sikanderpur-Nathupur bandh was projected on the bandh as *continuous linear feature* and the length of the bandh from the satellite imagery was measured to be 9,500 feet. By superimposing it on the scanned shajra of village Sikanderpur and Nathupur the khasra no. through which the said bandh is supposedly passing were figured out.

Here it is very important to note that as per the earlier records available with the Forest department itself, the length of the bandh was recorded as approx. 8250 feet (0 – 8.23 RD) and as per the map of bandhs of the Irrigation department dated 22.12.1962 the length is also shown to be exactly 8250 feet.

That the communication from DTP Gurgaon to STP Gurgaon circle, Gurgaon (Annex - 6 of the reply filed) is regarding the retrieval of forest land of Nathupur bandh, which was declared as protected forest vide notification dated 02.12.1981. In this it was mentioned that the relevant revenue documents and records were checked and it was found that no bandh is shown in the shajra plan of the entire land of 139.74 acres for which licences were granted over a period of time. However, while sending the field report of licence no.19 of 2003 (18.98 acres) it was mentioned that on the applied land a bandh was constructed by drainage department, hence, the consent of S.E, HUDA Gurgaon may also be taken before deciding the case. After submitting that the above said 139.74 acres land was of clear ownership it was mentioned that in the approved zoning plan the bandh was nowhere recorded.

- 8) That in response to the representation made by M/s Ambience Developers and Infrastructure Pvt. Ltd, order dated 16.10.2015 was passed the then PCCF, based on the records produced and the representation made by M/s Ambience Developers and Infrastructure Pvt. Ltd, wherein there were specific direction that the damage report no. 29065 dated 14.5.08 may be cancelled and prosecution case no. 7G/08-09 filed for violation of the provisions of IFA, 1927 and FCA, 1980 may be withdrawn with the permission of the Environment Court, Faridabad. This order has also been brought to the notice of the Hon'ble High Court and Copy of the letter dated 16.10.2015 is taken on record vide order dated 4.11.15.
- 9) That the detailed order dated 16.10.2015 stands withdrawn vide a brief order dated 19.1.2016. It is pertinent to mention here that there is no

reasoning given in the said letter for the withdrawal of the speaking order dated 16.10.15 of PCCF which been taken on record by the Hon'ble High Court

- 10) That M/s Ambience Developer and Infrastructure Pvt. Ltd. had applied for the diversion of khasra nos. 526, 534, 533, 535, 536 – the total area for the said diversion is approx. 4486 sq. mtr. It is not for this office to comment upon the application for diversion of the khasra nos. mentioned therein. However, while going through the records available it transpired that it was done in order to settle this long pending issue.

After analyzing the above mentioned facts and going through all the records as made available particularly the office noting dated 12.9.2016 of Deputy Secretary (Forest); office noting dated 30.09.2016 (which may be wrongly mentioned as 30.09.2010) of Special Secretary (Forest); and office noting dated 13.10.2016 of ACS (Forest), it is observed that there is wide discrepancy in the records regarding the extent of the bandh.

The details of Sikanderpur-Nathupur bandh forest land as recorded in forest records of Gurgaon Forest Division are: 0 - 8.23 RD (2.51 km long); 30 ft. wide; Area = 2.26 hectare. This is corroborated in the cartographic map of bandhs of Gurgaon Irrigation Division dating back to 22.12.1962 depicting the length of Sikanderpur-Nathupur bandh as 8250 feet. The records of Irrigation department and the Forest department are old and original and thus the primary evidence qua the length, width, extent and area of the bandh.

It was also observed from the records available that CCF (protection), Haryana vide letter no. 252 dated 6.5.2003 informed that the entire Nathupur bandh falls in the revenue estate of Nathupur village and the length of this bandh is 9,500 feet (2.85 km) and width is 52 feet covering an area calculated to be 4.59 hectare! It also transpired that GIS (geographical information system) was adopted and relied on by the forest department. On page 36 of the office file it is observed that Sh. Prem Prashant, GIS Analyst in the o/o PCCF, Haryana has stated on record that the satellite data of the year 2000 is experimental in nature and may not be accurate and the geo-reference map

prepared on Google imageries of the year 2000 after superimposing on the revenue shajra is likely to lead to substantial errors and thus may not be wholly reliable and may be termed as the secondary piece of evidence which is to be relied upon only in the absence of the primary evidence i.e. concerned record, maps, plans drawings etc . which is not the case here. Meaning thereby, that when there is ambiguity with respect to the exact length, width and the area of the bandh then reliance must be placed on the primary and original source of record and averments of the Irrigation department which is responsible for the proposing, planning, construction and maintenance of all bandhs in the state including the Sikanderpur-Nathupur bandh.

It is evident enough that there are inconsistencies and discrepancies in the record with regard to the khasra nos., length, width and area of the bandh due only to fact that the modern methodology adopted is not absolutely fool-proof as stated by the GIS Analyst in the o/o PCCF. Further, in absence of any survey or settlement report of the location, before notifying it as a Protected forest and also taking into consideration the submissions made by the forest department itself that the Irrigation department is the custodian of the bandh and all the records are available with them, it can safely be presumed, on the basis of the averments of the Forest department in the reply filed in CRM-34200 / 2012 , that the submissions made by the Irrigation department are to be relied upon in this case and the Irrigation department has categorically stated that the bandh never existed on the khasra nos. 531, 533 and 535. Hence, the damage report No. 29065 dated 14.05.2008 for violations under the Indian Forest Act, 1927 and Forest Conservation Act, 1980 may not tenable in law as it is based on wrong notions.

Thus, the opinion based on the observations made herein above is: -

On the first issue, raised by the ACS(Forest) - Whether the order of PCCF dated 16.10.2015 be implemented?

It is opined that the order passed by the PCCF dated 16.10.2015 is a cogent, well-reasoned and speaking order based on the facts brought before him and has also been placed on record before the Hon'ble High Court on

4.11.2015 and the Hon'ble Court passed the following order:

"Learned counsel for the petitioner submits that vide letter dated 16.10.2015 the damage report dated 14.05.2008 against the petitioner has been cancelled.

Whether forest authorities would likely to continue with the proceedings in the said circumstances would be a debatable issue.

Learned State counsel seeks time to confirm the said fact. Copy of the letter dated 16.10.2015 is taken on record."

Thus, taking into account that the order dated 16.10.2015 has already been taken on record by the Hon'ble High Court and also considering the fact and submission made herein above, the order of PCCF dated 16.10.2015 may be restored/revived and the subsequent order dated 19.01.2016 may be withdrawn.

On the second issue, whether the entire facts be placed before the Hon'ble High Court for decision on merits, it is opined that the order dated 16.10.2015 has already been placed on record before the Hon'ble High Court and the Court was pleased to make the following observation: -

"Whether the forest authorities would likely to continue with the proceedings in the said circumstances would be debatable issue"

Thus, in the light of the observations made by the Court and the facts of the case, file notings and records made available and in order to avoid unnecessary litigation as mandated by the para 14.1 State Litigation Policy-2010, it is opined that no purpose will be achieved if the matter is agitated any further.

(Signature)
29/12/16
(SHUBHRA SINGH)
Addl. Advocate General, Haryana

Ld.A.G.Hr.

(Signature)
28.12.2016

CM would like the above opinion to be viewed in a fresh note.

Matter relates to Forest deptt pl.

(Signature)
2.1.17
(Rajesh Khullar)
PSCM

C.F.M.S-104
06-11-17

On PSCM
No. (F) 47522
Date 02/01/2017
03

14
2/1/17

PSCM.

NO AC STOP

File No. 47522(403)

Date 6/1/17

put up on display

AcS recd

AcS Forest

हरियाणा सरकार



Sub.: Representation dated 23.08.2016 of Ambience Developers & Infrastructure Pvt. Ltd.

The facts of the case may kindly be perused on noting pages ante. These are briefly reiterated as under:

1. Forest Department, Gurgaon issued a damage report (DR) No. 29065 dated 14.05.2008 against Mr. Raj Singh Gehlot for illegal breaking of protected forest land in Nathupur Bundh in Gurgaon district for construction works by M/S Ambience Developer and Infrastructure Pvt. Ltd. and the offence case was sent for prosecution in the Hon'ble Environment Court, Faridabad in 2008-09. The Nathupur bundh is notified as protected forests vide notification of 1981. Sh. Raj Singh Gehlot has filed an application CRM No. 34200 of 2012 in the Hon'ble High Court of Punjab and Haryana for quashing the damage report. DFO, Gurgaon in written reply submitted before the Hon'ble High Court has stated that the disputed lands are part of Nathupur Bundh and was cleared illegally for construction of Ambience Lagoon Apartment by M/S Ambience Developer and Infrastructure Pvt. Ltd. In 2015, the company had applied for post facto approval under the Forest (Conservation) Act, 1980 for diversion of said forest land for which damage report was issued. While forwarding the proposal for diversion to the Govt., PCCF recommended imposing 10 times penalty for violation of forest laws. Since the matter was subjudice in the Hon'ble Environment Court and Hon'ble High Court, the Govt. vide letter 21.09.2015 requested the then PCCF to examine the legal issues in the matter and submit detailed report along with recommendations in the forest diversion case.
2. On a representation submitted by Ambience Developers and Infrastructure Pvt. Ltd., Sh. S. S. Jattan IFS, earlier PCCF, vide letter 16.10.2015 held that land bearing Khasra No. 526, 533, 534, 535, and 536 for which the company applied under the FC Act, 1980 is not a forest land. The land belonging to M/S Ambience Developer and Infrastructure Pvt Ltd and its Associate Companies has Khasra numbers which does not belong to the Sikandarpur-Nathupur bundh as per the information supplied by the Irrigation Department in 2002 for de-notification of the Sikanderpur-Nathupur bundh. D.F.O Gurgaon had written to Conservator of Forests, Gurgaon vide letter no. 1117 dated 24.12.2002 to de-notify the bundh area falling in the Nathupur village. CF Gurgaon further informed the CCF (protection), Haryana vide letter no. 252 dated 6.5.2003 that the entire Nathupur bundh falls in the revenue estate of Nathupur village and as per revenue record owned by private individuals khasra no. length etc. CF Gurgaon reported that the length of the bundh was 9500 feet (2.85 km) and width was 52 feet and area was calculated as 11.34 acre (4.59 hectare). As per the forest record of Gurgaon Forest Division, the length of the bundh was 2.56 Km (8.25 rd) and the width was 30 feet with area of 2.26 hectares. Khasra no. of Nathupur bundh as reported by the Irrigation Department are :- 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158, and 159. For the purpose of regularization of unauthorized forest diversion by M/S Ambience Developer and Infrastructure Pvt Ltd the proposal for the diversion of part of Nathupur bundh PF under FCA measuring 4486 Sq mtrs passing

हरियाणा सरकार



through khasra no. 526,533, 534, 535, and 536 was submitted. On analyses it has been discovered that these khasra no. applied for are not mentioned in the report of the Irrigation Department submitted in 2002 as part of Nathupur bundh and therefore lands bearing 526, 533,534,535 and 536 khasra numbers are not forest land notify under Indian Forest Act 1927 and the damage report issued for violation of IFA on this land is not tenable. Accordingly, the then PCCF vide letter dated 16.10.2015 ordered that the damage report (DR) no.29065 dated 14.5.2008 issued against Mr. Raj Singh Gehlot is hereby cancelled and the DFO (T) Gurgaon is directed to withdraw the prosecution case no 7G/08-09 with the permission of the Hon'ble Environment Court, Faridabad. The FCA case FR/HR/others/13983/2015 submitted by M/s Ambience Developer and Infrastructure Pvt Ltd is hereby cancelled as withdrawn since no forest land is involved.

3. Subsequently, incumbent PCCF based on the report submitted by DFO, Gurgaon and CF, Gurgaon informed the Govt. that the land in question bearing Khasra No. 526, 533, 534, 535, and 536 is in fact forest land and the letter dated 16.10.2015 in which it is stated that the land under reference is not a forest needs to be treated as *non est*. Deputy Conservator of Forests, Gurgaon submitted the following contentions with regard to the aforementioned letter dated 16.10.2015: (i) that the Sikanderpur-Nathupur Bundh is a protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 and thereby the provisions of Indian Forest Act and Forest Conservation Act are applicable in the said area. The accused have in the present case carried out unauthorized constructions leading to the destruction of forest area and thereby violated the Indian Forest Act, 1927 and the Forest Conservation Act, 1980 (ii) that satellite images of the land in question of the year 2000 clearly shows Sikanderpur-Nathupur Bundh as a continuous linear feature with linear arrays of trees on both sides. The longitudinal section of the Bundh as obtained from the Irrigation Department reveals that the total length of this Bundh is 9500 Feet which is 2.895 Km and this is further corroborated by the measurement of 2.87 Kms. based upon satellite imagery. (iii) Superimposition of geo-reference sajra onto the satellite imagery clearly reveals that the bundh is passing through the Khasra numbers 531, 533 and 535, and the fact that this land is also a part of the land on which Ambience Lagoon apartments now stand constructed highlights the destruction of a stretch of Protected Forest (iii) that time tagged imageries of the site in question clearly reveal the presence of the Bundh/Protected Forest during the year 2000/2002 and the exact geo-space is being occupied by the constructed buildings. This clearly and photographically establishes the physical fact of violation of IFA, 1927, be it in whichever Khasra number; (iv) that letter no. 1109 dated 27.04.1992 issued by DTP, Gurgaon which clearly states the existence of a bundh in the area pertaining to license number 19 of 18.98 acres, i.e. the present area (v) that the aforementioned evidence has already been placed on record before the Hon'ble Punjab and Haryana High Court in CRM No. 34200 of 2012 -Raj Singh Gehlot v. State of Haryana and others. The Deputy Conservator of Forests, Gurgaon submitted that in light of the aforementioned the decision taken to withdraw the ongoing prosecution case no. 7G/08-09 filed in the Hon'ble Environment Court, Faridabad under section

हरियाणा सरकार



of Indian Forest Act, 1927 against Mr. Raj Singh Gehlot for violations under the Indian Forest Act, 1927/Forest Conservation Act, 1980 needs to be reviewed. Therefore, in light of the aforementioned submissions and observations, PCCF has concluded that the land in question is forest land and recommended that the letter no. NT/D-III-6381/4344 dated 16.10.2015 issued by PCCF, Haryana in which it is stated that land under reference is not a forest land needs to be treated as *non est.* and the case of the user agency for diversion under the FCA may be processed as per law. After considering the case, the Govt. vide letter dated 15.01.2016 directed PCCF to withdraw letter dated 16.10.2015 and PCCF vide letter dated 19.01.2016 has withdrawn the letter dated 16.10.2015.

4. There are two issues involved in this case. First, the Nathupur Bundh has been notified as protected forest vide notification no. S.O. 251/C.A.A16/27/S.29/81 dated 2nd December 1981 as per the provisions of the Indian Forest Act, 1927. As per record, the lands of this Bundh belong to private individuals. These lands were never acquired by Irrigation Department and hence these are not the property of the State Government. Therefore, these lands owned by private individuals should not have been notified as Protected Forests as per the provisions of the IFA, 1927. However, the Bundh has advertently/inadvertently been notified as Protected Forests without inquiring and recording the rights of private persons and without report from Irrigation/Revenue Department. Second, there is ambiguity with regard to Khasra Numbers of Nathupur Sikanderpur bundh and the Department does not have records of Khasra number of the land. According to earlier PCCF, Nathupur bundh comprises Khasra No. 436, 430, 405, 392, 391, 389, 88, 109, 120, 119, 118, 117, 97, 96, 94, 93, 91, 92, 150, 153, 165, 154, 157, 158 and 159. These Khasra numbers were provided by Irrigation Department. The Irrigation Department had written to DFO, Gurgaon vide letter dated 27.08.2002 to give permission for abandonment and leveling of the bundh in question and for issuance of certificate that the bundh in question does not fall in the category of Reserved Forest and NOC to this effect be issued. It has been stated that the land of the bundh does not belong to Irrigation Department but is under the private ownership. Then PCCF has indicated that a comparison of the khasra numbers provided by the Irrigation Department to DFO, Gurgaon for permission for leveling Nathupur Bundh, which was later recommended by Conservator of Forests shows that the entire bundh measuring 2.85 km with khasra details does not pass through khasra numbers and area owned by M/S Ambience Developer and Infrastructure Pvt. Ltd for their project named Ambience Islands. On the other hand, the incumbent PCCF has concurred with DFO, Gurgaon who has stated that there is a bundh on the land in question comprising khasra no. 2, 3, 4, 5, 527, 528, 529, 530, 531, 532, 533, 534, and 535. Further, DFO, Gurgaon has determined Khasra No. 531, 533 and 535 as parts of the bundh based on geo-reference map prepared on Google imageries of 2000 after superimposing with Sajra on which Ambience Lagoon Apartment has been constructed. The construction of this apartment started in 1996 and completed in 2001. The geo-reference map has been prepared by the Department itself, not by any specialized agency. Sh. Prem Prashant, GIS analyst O/O. PCCF, Haryana has informed that satellite data of 2000 being experimental in nature may not be accurate and the geo-reference map

prepared on Google imageries of 2000 after superimposing with Sajra may lead to substantial error.

5. As far as area of the Bundh is concerned, there are few contradictions. The Nathupur Bundh was notified as protected forest u/s 29 of the Indian Forest Act, 1927 on 02.12.1981 by the Forest Department assuming the same to be government forest land. The specifications of Nathupur Bundh forest land is recorded in the forest records of Gurgaon Division as follows: 0-8.25 RD; 2.51 Km long; 30 ft. wide; Area 2.26 Hectare. The DLF applied for diversion of 2.2 ha forest land of Nathupur Bundh under the Forest (Conservation) Act, 1980 comprising following Khasra No. 437, 430, 119, 118, 117, 97, 96, 94, 93, 151, 153 and 157 which are owned by the company. The Govt. of India, MoEF accorded approval for diversion of 2.2 ha of forest land to DLF in 2007. Thus, there is only 0.06 ha forest land left after diversion in favour of DLF. However, the forest area mentioned in damage report issued against Sh. Raj Singh Gehlot is 380 m x 16 m i.e., 0.6080 ha. Further, the company applied for diversion of 0.4486 ha forest land comprising Khasra No. 526, 533, 534, 535 and 536. M/s. Alankar Apartments Pvt. Ltd. and Sara Estate Pvt. Ltd. have sought clarification regarding non-applicability of forest laws on land measuring 7.25 acres (2.93 ha) and 12.01 acre (4.86 ha) land respectively.

6. After re-examinations of entire facts and circumstances, it appears that the order of PCCF dated 16.10.2015 was passed on merits while DFO Gurgaon, has placed the objections moved the case for withdrawal of said order without considering the facts and merit of the case. However, in view of above contradictions, anomalies and pending case in the Hon'ble High Court, the case was re-submitted to the Government for seeking legal opinion of the Ld. Advocate General Haryana, on following issues: (i) whether the order of earlier PCCF dated 16.10.2015 be implemented or (ii) whether entire facts be placed before the Hon'ble High Court for a decision on merit and also to take cognizance of facts/sequence of event which led to this controversy and let the guilty be punished.

7. Ld. Advocate General has given his opinion which may be perused at NP. 44-51. Hon'ble CM at NP. 51 has desired that the opinion of the Advocate General be weaved in a fresh note. After examination of all facts and events, AG, Haryana has concluded that (i) taking into account that the order dated 16.10.2015 has already been taken on record by the Hon'ble High Court and also considering the fact and submission made herein above, the order of PCCF dated 16.10.2015 may be restored/revived and the subsequent order dated 19.01.2016 may be withdrawn, and (ii) no purpose will be achieved if the matter is agitated any further in the Hon'ble High Court. The relevant parts of the opinion of AG, Haryana is reproduced as under with underline added:

On the first issue, raised by the ACS (Forest)- Whether the order of PCCF dated 16.10.2015 be implemented?

It is opined that the order passed by the PCCF dated 16.10.2015 is a cogent, well-reasoned and speaking order based on the facts brought before him and has also been placed on record before the Hon'ble High Court on 4.11.2015 and the Hon'ble Court passed the following order:

Government of Haryana
KEEP HARYANA CLEAN AND POLLUTION FREE

हरियाणा सरकार



"Learned counsel for the petitioner submits that vide letter dated 16.10.2015 the damage report dated 14.05.2008 against the petitioner has been cancelled.

Whether forest authorities would likely to continue with the proceedings in the said circumstances would be a debatable issue.

Learned State counsel seeks time to confirm the said fact. Copy of the letter dated 16.10.2015 is taken on record.'

Thus, taking into account that the order dated 16.10.2015 has already been taken on record by the Hon'ble High Court and also considering the fact and submission made herein above, the order of PCCF dated 16.10.2015 may be restored/revived and the subsequent order dated 19.01.2016 may be withdrawn.

On the second issue, whether the entire facts be placed before the Hon'ble High Court for decision on merits, it is opined that the order dated 16.10.2015 has already been placed on record before the Hon'ble High Court and the Court was pleased to make the following observation:-

"Whether the forest authorities would likely to continue with the proceedings in the said circumstances would be debatable issue".

Thus, in the light of the observations made by the Court and the facts of the case, file notings and records made available and in order to avoid unnecessary litigation as mandated by the para 14.1 State Litigation Policy 2010, it is opined that no purpose will be achieved if the matter is agitated any further.

Therefore, as per the opinion of Ld. AG, Haryana, the order of PCCF dated 16.10.2015 may be restored/revived and the subsequent order dated 19.01.2016 may be withdrawn. Secondly, no purpose will be served to continue with the proceedings in the Hon'ble High Court. Accordingly, the case for restoration of order dated 16.10.2015, withdrawal of order dated 19.01.2016, withdrawal of case pending the Environment Court and Hon'ble High Court is submitted to W/Addl. Chief Secretary, Forests/ Hon'ble Forest Minister/Hon'ble Chief Minister for order, please.

AAH

D. Hembram
SSFt
11.01.2016

ACS Ft

CFMS-104
11/1/17



जय हिन्द

from pre-page

-57-

My noting at NP/37 to 43 and the opinion of the Ld. Advocate General of Haryana at NP/44 to 51 (ante) which is clear in itself may kindly be perused. The Ld. AG, Haryana has tendered his opinion on two issues. On issue No. 1 Ld. AG, Haryana has opined that the order of PCCF dated 16.10.2015 may be restored/revived and the subsequent order dated 19.01.2016 may be withdrawn.

On second issue AG, Haryana has recommended that no purpose will be served to continue with proceedings in the Hon'ble High Court.

I agree with Ld. AG, Haryana on issue No. 1.

Regarding issue No. 2, I am of the view that guilty officers who have caused hardship/harassment to the complainant should not get away unpunished. I have been watching/witnessing the harassment caused by the Department Officials to even general public in many other matters also. Sometime the officials of the department indulge into using the NGOs and Print Media (while staying in the background) clearly demonstrating their whims and fancies. Hence departmental proceeding should be initiated against guilty officials.

Submitted to Government for necessary orders please.

(Signature)

(R.R.Jowel)

ACSFI.

13.01.2016

Forests Minister

CM

CM has seen. he has directed that while taking the proposed action compliance with all applicable laws/due procedure be ensured in consultation with AG.

(Signature)

Pt. M. 18.1.2017

Rao Narbir Singh
Forests Minister,
Haryana, Chandigarh

Ft. M.

Pr. sp.
22-2-17

(Signature)
12.2.17

(Rajesh Khullar)
PSCM

Chief Minister Secretary
Haryana
File Receipt No. 104
Dated 19/1/17

CFMS-104
13-1-17

Chief Minister Secretariat
Haryana
File Receipt No. 3142
Dated 19/1/2017

O/o PSCM
No. (F) 3142
Date 19/1/17
12/2/17

ACSFI

(Signature)



हरियाणा सरकार

Sub.: Representation dated 23.08.2016 of
Ambience Developers & Infrastructure Pvt. Ltd.

The facts of the case may kindly be perused on noting pages ante. In this matter, Hon'ble CM on NP 57 has desired that "while taking the proposed action compliance with all applicable laws/due procedure be ensured in consultation with AG".

As already explained, there are three proposed actions in this matter which are as follows:

- (i) The order of PCCF dated 16.10.2015 which was subsequently withdrawn vide PCCF letter dated 19.01.2016 is to be restored/revived. PCCF vide letter dated 16.10.2015 ordered that (i) the damage report (DR) No. 29065 dated 14.5.2008 issued against Mr. Raj Singh Gehlot is hereby cancelled, (ii) DFO (T) Gurgaon is directed to withdraw the prosecution case no 7G/08-09 with the permission of the Hon'ble Environment Court, Faridabad, and (iii) the FCA case FR/HR/others/13983/2015 submitted by M/s Ambience Developer and Infrastructure Pvt Ltd is cancelled as withdrawn since no forest land is involved.

In this matter, AG, Haryana has opined that taking into account that the order dated 16.10.2015 has already been taken on record by the Hon'ble High Court and also considering the fact and submission made herein above, the order of PCCF dated 16.10.2015 may be restored/revived and the subsequent order dated 19.01.2016 may be withdrawn.

- (ii) Sh. Raj Singh Gehlot has filed an application CRM No. 34200 of 2012 in the Hon'ble High Court of Punjab and Haryana for quashing the damage report. AG, Haryana has opined that no purpose will be achieved if the matter is agitated any further in the Hon'ble High Court. The Hon'ble High Court on 4.11.2015 passed the following order in this matter:

"Learned counsel for the petitioner submits that vide letter dated 16.10.2015 the damage report dated 14.05.2008 against the petitioner has been cancelled.

Whether forest authorities would likely to continue with the proceedings in the said circumstances would be a debatable issue.

Learned State counsel seeks time to confirm the said fact. Copy of the letter dated 16.10.2015 is taken on record.'

In view of above, Hon'ble High Court is to be informed that Forest Department would not like to continue with the proceedings after restoration of order of PCCF dated 16.10.2015.

हरियाणा सरकार

(iii) Departmental proceeding is to be initiated against guilty officials who have caused hardship/harassment to the complainant.

As desired by Hon'ble CM, the case may be submitted to Advocate General, Haryana for vetting/concurrence. Once vetted, necessary directions will be issued to PCCF for initiating proposed actions compliance with all applicable laws/due procedures.

D. Hembram
D. Hembram
SSFt
16.03.2017

~~ACS Ft~~

[Signature]

17.3.17

~~AG Haryana~~

9158
17/3/17

CFMS-104
13-11-17
16-3-17
29-3-17

As per the opinion given by the office of Advocate General, ^{out of} the three proposed action, i & ii are in consonance with the legal opinion given. As far as proposed action as per no iii) the office of Advocate General is not authorized to comment since it would be internal matter of the department. But in my considered legal opinion any such action proposed would be time based and as such no purpose will be served.

~~AG Haryana~~

[Signature]
Adv. Gen.
28/3/17

[Signature]
28-3-2017

ACS Ft.

29-3-17

[Signature]
30/3

16455
28/3/17

from prepage

As approved prepage 59 (W), accordingly draft is added for approval of W/ACSFT please.

Flag-2"

Level
W/ACSFT

Jeet Singh

30/3/2017

Syed Aftab

RPH
30/3/17

US FT (bassy)

~~SSFT~~

~~ACSFT~~

RPH
30/3/17

SSFT

31/3

USFT/ST / 5 9
31/3

RPH
31/3

Five copies of draft is added for signature please.

Jeet Singh

31/3/2017

Syed Aftab -5

RPH
31/3