

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION NO.11/2015(WZ)

CORAM:

**Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

Mr. Jayant Baregar,
F-5 Nimish Plaza, Katak
panand, Salai Wada
Sawantwadi, Dist Sindhudurg.

.....Applicant

A N D

1. State of Maharashtra

Through its Principal Secretary,
Department of Revenue and
Forest,
Maharashtra State,
Mantralaya, Mumbai – 400
032.

**2. The Principal Chief
Conservator of Forest,**

Head of the Forest Force,
Maharashtra State, Civil
Lines, Ramgiri Road, Nagpur.

**3. The Chief Conservator of
Forest,**

'Vanavardhan' Ambedkar
Chowk, Opp. Head Post Office,
Tarabai Park, Kolhapur – 416
003.

4. The District Collector,
Sindhudurg Nagari,
Dist. Sindhudurg – 416 812.

**5. V.A. Bhosale, Asst. Con. Of
Forest,**
Kolhapur Division, “Van
Vardhan” Ambedkar Chowk,
Opp. Head Post Office, Tarabai
Park, Kolhapur – 416 003.

6. P.L. Kambale,
Plantation Officer
Social Forest Range,
Satara.

7. Vijay Dashrath Hindlekar
Deulwada, Aadvan,
At & Post Wayari, Malvan,
Taluka Malvan,
Dist. Sindhudurg.

.....Respondents

Counsel for Applicant :

Mr. Asim Sarode Adv.& Associates.

Counsel for Respondents :

Ms. Fawia M. Mesquita Adv. for Respondent Nos. 1 to 3

Mr. Samir B. Ghare Adv. for Respondent No.4

Mr. A.V. Sakurkar Adv. for Respondent No.5

Mr. Pramod K. Sask, Adv. for Respondent No.6

Mr. Vijay Dasharath Hindelkar (In person)

Date: 8th January, 2016.

JUDGMENT

1. The Applicant, Shri Jayant Baregar, who is running a sawmill in Sindhudurg District of Maharashtra,

has filed this Application raising issues related to illegal cutting down of trees and not following the concerned laws and rules. The Applicant alleges that illegal cutting of trees in Sindhudurg District raise a substantial question related to environment and also, involves restitution of the environment and compensation commensurate to the damage done to the ecology.

2. The Applicant states that on December 15th, 2009, Deputy Conservator of Forests Sawantwadi passed an order under the Maharashtra Felling of Trees (Regulation) Act, 1964 directing that heavy fine shall be imposed for illegal tree cutting and the raw material shall be deposited into Government custody. He states that the Forest Department, State of Maharashtra vide Circular dated January 29th, 1998 stipulated that prosecution shall be initiated before the competent court in case of illegal cutting of trees such as Saag, Sandalwood etc. and the price of such raw material exceeds Rs.2000/-. The Applicant further states that there are more than 300 cases which are registered in Kudal regarding felling of trees without permission. He further states that a large portion of Sindhudurg District is covered under the eco-sensitive area Notification issued by the Government of

India and part of the Gadgil Committee Report on Western Ghats.

3. It is the case of the Applicant that such a large scale illegal tree cutting is carried out with the help of certain forest officials and the Tree Act of 1964 is not followed *stricto sensu* in the District. He has submitted certain details with documents and further states that departmental inquiry has been ordered by the Forest Department against some forest officials which is taking excessively long time to conclude its proceedings. As most of the area of the District is now covered under eco-sensitive area in the Western Ghat region, it is necessary to deal with such illegal tree cutting with all its seriousness and by applying stringent penalties for illegal activities. He has alleged that certain modus operandi is practiced in connivance with some forest officials and even necessary permission which is required to be taken from all the public members whose names have been mentioned on 7/12 extract, is not taken. The Applicant states that such illegal tree cutting is causing damage to the local eco-system and the bio-diversity which is significant in view of the fact that most of the areas of the District are covered in the eco-sensitive area by Western Ghat Notification.

4. The Applicant has made following prayers:-

“Prayers-

- I. *The Respondents may kindly be directed to file comprehensive reply in form of affidavit on the contentions raised through this application regarding illegal tree cutting and allegations of corruption in Sindhudurg District.*
- II. *The Respondent no. 1 Principal Secretary, Department of Revenue and Forest, Respondent no. 2. The Principal Chief Conservator of Forest, Head of the Forest Force and Respondent 3. Chief Conservator of Forest Kolhapur and Respondent No. 4. The Collector of Sindhudurg may kindly be directed to submit separate detail action taken reports on alleged illegal cutting of trees from the year 2009 till Dec 2014.*
- III. *Directions may kindly be given to Respondent no. 3 to register offences against Range Forest Officer Kudal Mr. Vijay Appasaheb Bhosale, Round Forest Officer Malvan P.L. Kamble and Forest Guard Dhamapur Mr. Vijay Dashrath Hindlekar. Further directions may kindly be given to submit on record as to why the departmental enquiry against these corrupt officials is still pending.*
- IV. *The Respondent no. 4 Collector Sindhudurg may kindly be directed to stop the illegal functioning by using provision of S. 25(2) of the Maharashtra*

Land Revenue (Regulation of Right to Cut Trees) Rules 1967.

- V. *Respondent no. 2 and 3 may be directed to take immediate legal actions against errant public servants and impose heavy fines against whoever have misused their position as public servants and indulged into corrupt practices damaging the environment.*
- VI. *Orders may be given to the Respondent no. 1 to set up a Special Investment Team(SIT) to investigate the illegalities and level of corruption as well as to identify and list the names of persons involved in the same and to submit the report before the Hon'ble NGT in 30 days from the date of the order before finalization of the present application.*
- VII. *Taking into consideration the social purpose of the Applicants in filing this Application, the Respondents may kindly be asked to pay the costs/legal expenses to the Applicants for this Application.*
- VIII. *Permission may kindly be granted from time to time to the Applicants to submit various research papers and documents add and delete some paragraphs and carryout amendment if needed with the due permission of the court."*

5. The Respondent Nos.1 to 3 have filed an affidavit on July 30th, 2015 through Assistant Conservator of Forests, Sawantwadi and state that the Circular of DCF,

Sawantwadi dated July 10th, 2009 is being followed in addition to the provisions of Maharashtra Felling of Trees (Regulation) Act, 1964, under which Tree Officer (i.e. Forest Officer not below the rank of Range Forest Officer) takes action according to the provisions therein, by imposing fine and forfeiting to State Government the scheduled tree/trees felled in contravention of the legal provisions. He further states that in respect of trees not specified in that schedule, actions are to be taken by the concerned Revenue Officer i.e. Tahsildar to whom powers of Collector under Section 25 of the Maharashtra Land Revenue Code, 1966 have been delegated. He further states that the State Government has framed the Rules under the Land Revenue Code, 1966 named as Maharashtra Land Revenue (Regulation Of Right To Trees Etc) Rules, 1967. It is further stated that departmental inquiry against the erring officers is under progress and is expedited as per the provisions of the Rules.

6. The Respondent Nos.1 to 3 deny that there is any large scale illegal tree cutting and state that in case of any illegal tree cutting noticed or reported, suitable action is taken by the Forest Department. In short, the submission of Respondent Nos.1 to 3 is that the tree felling does not fall under the banned activity. However,

the same is strictly regulated under the existing Acts and Rules. It is also stated that considering the environmental sensitive status, Respondents and their officers are taking necessary steps to strictly enforce the existing Regulations. Respondents therefore, resisted the Application.

7. The Respondent Nos.1 to 3 submitted another affidavit on August 7th, 2015 and submitted that Collector Sindhudurg issued letter to Forest Officer, Sawantwadi on June 30th, 2012 with reference to Hon'ble High Court order that there shall be no certificate issued using Section 25(2) of the Maharashtra Land Revenue Code, 1966. Respondent Nos.1 to 3 further state that the Forest Department is vigilant and careful to protect the forest and necessary patrolling, day and night, in the forest area is practiced.

8. Respondent No.4 has filed an affidavit through Additional Collector, Sindhudurg and states that the Collector Office vide letter dated May 15th, 2013 directed all the Tahsildars to act upon the applications received under Section 25(2) of the Maharashtra Land Revenue Code, 1966 as per the directions of the Hon'ble High Court dated February 20th, 2013 in Writ Petition No. 4095/2011. The Respondent No.4 has further elaborated

the legal provisions of the Maharashtra Felling of Trees (Regulation) Act, 1964 and the Land Revenue Code in paragraph No.7 of the affidavit which is reproduced below:-

“7) I Say that, in view of provisions of the Maharashtra Felling of Trees (Regulation) Act, 1964 the Forest officer not below the rank of a Range Forest Officer is authorized to grant or to reject an application made to fell a tree specified in the schedule under that Act and to take actions for committing breach of those provisions. While in view of the provisions of the Rules of 1967 read with section 25 of the Maharashtra Land Revenue Code, 1966, the Collector (its delegate Tahsildar) is empowered to take actions for cutting of specified trees mentioned in Rule 2 of Rules of 1967. But the restriction for cutting or felling applies to all species of trees only under circumstances mentioned in Rule 2 of Rules of 1967. If such circumstances do not prevail no permission is required for cutting or felling of trees.

It is, therefore, respectfully submitted that no certificate under section 25(2) of the Maharashtra Land Revenue Code, 1966 is required if cut or felled tree/trees is /are not covered by provisions of rule 2 of Rules of 1967.”

The Respondent No.4 also opposed the Application and prays for dismissal of the same.

9. The Respondent Nos.5, 6 and 7 were added as party as it is alleged by the Applicant that the Respondent Nos.5, 6 and 7 were the officers of the Forest Department under whose jurisdiction major illegal tree cutting was carried out and the Forest Department had initiated departmental inquiry against those officials.

10. The Respondent Nos.5, 6 and 7 filed individual affidavits and resisted the Application mainly on the ground that this Application has been filed with oblique motive and malafide intentions. The Applicant has failed to establish any illegal tree cutting in the said area during the tenure of these officials and had even further failed to establish that the Respondents have any, even remote, role in such alleged tree cutting. They also submitted that in case of certain alleged non-compliance of internal guidelines, the department has taken suitable cognizance and therefore, the Applicant cannot espouse this cause to start a fresh litigation. They also alleged that Applicant does not have *locus standi* and the Application is time barred as the alleged tree cutting was conducted somewhere in 2009-10 and the Section 14 of the National Green Tribunal Act, 2010 specifically prohibits Applications after six months.

11. In view of the documents placed on record and submissions of the contesting parties, following issues can be culled out for final adjudication of the matter:-

(i) Whether the Application is barred by limitation of delay and jurisdiction?

(ii) Whether the illegal tree cutting in the Sindhudurg District has been established on record?

(iii) Whether the Tribunal is required to pass any direction on the basis of precautionary principle to protect the local ecology of Sindhudurg District?

12. Considering the rival contentions and pleadings, it is prudent to deal with all these 3 issues simultaneously. The Applicant has prayed for stopping the illegal tree cutting in Sindhudurg District by proper enforcement of Maharashtra Land Revenue (Regulation Of Rights to Trees Etc.) Rules, 1967 read with Maharashtra Felling of Tree (Regulation) Rules, 1967. There is no dispute about the fact that the alleged tree cutting is from the area which is neither a forest nor the identified private forest. Learned Counsel for the Applicant argued that provisions of both these Regulations are tweaked by the officials of the Forest Department in connivance with the alleged violators, that is resulting into large scale tree cutting in Sindhudurg District, of which a large portion is

identified as eco-sensitive area under Western Ghat report. He also argued that such a tree cutting is disturbing the local eco-system and causing irreversible damage to the environment and more particularly to the flora and fauna.

13. Both these Regulations namely Maharashtra Felling of Trees (Regulation) Act, 1964 along with Rules made thereunder and Maharashtra Land Revenue Code, 1966 along with Rules made thereunder, are not listed in Schedule-I appended to the National Green Tribunal Act, 2010. Obviously, the Tribunal cannot enter into any legal issue pertaining to effective enforcement or implementation of these Regulations, being a statutory body.

14. Further the Applicant has prayed for expeditious departmental action against certain erring officials and has relied on several documents to put-forth his argument. The Tribunal is a statutory body created by a special Act and ordinarily, the Tribunal is not expected to enter into the administrative domain of the department to issue such directions. It is for the authorities of the concerned department to look into such necessity and expedite the actions as per the Rules. In any case, the Applicant is at liberty to avail the writ

jurisdiction of the Hon'ble High Court, if he has any grievance on both these aspects i.e. enforcement of the above referred Regulations and the administrative actions.

15. Still however, the issue related to the illegal tree cutting in large scale is important for protection of the environment in Sindhudurg District. There cannot be duality of the opinion that illegal deforestation would seriously impair environment and ecology. There is no dispute about the fact that large portion of Sindhudurg District is identified as eco-sensitive area under the report of Gadgil Committee. It is therefore, necessary for the Tribunal to ensure that the ecology and environmental integrity are preserved during the holistic development of this area in view of its rich and unique bio-diversity, as the Ministry of Environment and Forest has already issued directions under Section 5 of the Environmental Protection Act, 1986 on November 13th, 2013 for this area.

16. The Government of Maharashtra, in order to make better provision for regulating the felling of certain trees in the State of Maharashtra, for the purpose of the preservation thereof; and for the protection of soil against erosion and to provide matters connected therewith, has

promulgated the Maharashtra Felling of Trees (Regulation) Act, 1964. Under this Regulation, the cutting of trees which are specified in the Schedule appended to the Act, is regulated by the Tree Officer who is a forest official not below the rank of the Range Forest Officer. Subsequently, Government of Maharashtra has also notified the Maharashtra Land Revenue (Regulation of Right to Trees etc.) Rules, 1967, stipulating Regulation of cutting of trees for prevention of erosion of soil. The Regulation has prohibited cutting of trees in certain cases and the relevant Rule is reproduced below:-

“2. Cutting of trees prohibited in certain cases- (1) *No tree within thirty metres of the extreme edge of the bank of any water-course, spring or a tank shall be cut, except with the previous permission of the Collector.*

(2) *In any case not falling under sub-rule (1), no tree in any holding or part of a holding containing uncultivable in which economic cultivation of field crop is not possible shall be cut without the previous permission of the Collector, if the tree growth in that holding or part holding is less in proportion than twenty trees per acre.*

(3) *Any person committing a breach of this rule shall, in addition to any other consequences that would ensue from such breach, be punishable with such fine not exceeding one thousand rupees as the*

Collector may, after giving such person an opportunity to be heard deem fit to impose.”

17. Now coming to the main Application, the allegations related to the tree cutting are related to wrongful interpretation of the above specified State Regulations which are not covered by the National Green Tribunal Act, 2010 and therefore, this Tribunal cannot adjudicate on this particular aspect and the Applicant is at liberty to seek any other alternative remedy for the said purpose.

18. Still however, considering to overall environmental implications of the illegal tree cutting and more particularly, with the fact that large portion of Sindhudurg District is identified as eco-sensitive area by the Gadgil Committee report of Ministry of Environment and Forest and it is necessary to ensure for preservation of ecology and environmental integrity of the said area, in view of its rich and unique bio-diversity, we feel it necessary that tree cutting and felling activities in Sindhudurg District needs to be effectively regulated, as there seems to be some degree of confusion and misinterpretation of relevant Regulations, which is resulting in lack of proper and effective co-ordination between Forest Department and Revenue Department.

We, therefore, deem it proper to issue following direction based on the precautionary principle as enumerated in Section 20 of the National Green Tribunal Act, 2010:-

Respondent No.1 i.e. Principal Secretary, Department of Revenue and Forest shall issue instructions to both the Revenue and Forest officials in Sindhudurg District to strictly enforce the existing Regulations related to cutting of trees in the non-forest areas and may issue suitable comprehensive advisory/guidelines, to reiterate the existing legal provisions, within six (6) weeks.

19. The Application is disposed of accordingly. No costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay.A. Deshpande)

Date :8th January, 2016.

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