

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH
BHOPAL**

Original Application No. 41/2013 (CZ)

CORAM:

**Hon'ble Mr. Justice Dalip Singh
(Judicial Member)**

**Hon'ble Mr. P.S.Rao
(Expert Member)**

BETWEEN:

Smt. Mithlesh Bai Patel
W/o Shri Shahdev Patel, aged 30 yrs,
R/o Bikakheda, Tehsil Sihora,
District Jabalpur, Madhya Pradesh

.....Applicant

Versus

1. State of Madhya Pradesh
Through its Secretary, Deptt. of Mining,
Mantralaya, Bhopal, Madhya Pradesh.
2. Under Secretary, Deptt. of Mining,
Mantralaya, Bhopal, Madhya Pradesh,
3. Central Pollution Control Board,
Through its Zonal Officer, 3rd Floor,
Shahkar Bhawan, T.T. Nagar,
Bhopal, Madhya Pradesh.
4. Madhya Pradesh Pollution Control Board,
Through its Member Secretary,
Paryawaran Parisar, E-5, Arera Colony,
District Bhopal, Madhya Pradesh.
5. Collector (Mining)
District Jabalpur, Madhya Pradesh.
6. Ashok Khare S/o Sh. Narmada Prasad Khare,
R/o Jwala Mukhi Road, Behind Post Officer,
Tehsil Sihora, District Jabalpur, M.P.
7. Chief Secretary, State of Madhya Pradesh,
Mantralaya, Vallabh Bhawan, Bhopal.
8. Principal Secretary,
Department of Housing & Environment,
Mantralaya, Vallabh Bhawan, Bhopal.

9. Principal Secretary, Department of Forest,
Mantralaya, Vallabh Bhawan, Bhopal.

.....Respondents

Counsel for Applicant : Shri Bhoopesh Tiwari, Advocate

Counsel for Respondent Nos. 1,2,5,7,8&9 : Mr. Ayush Dev Bajpai, Advocate
with Mr. H.S. Mohanta, DFO,
Jabalpur & Mr. R.J. Parihar, Dy.
Collector, Jabapur

Counsel for Respondent No. 3: Mr. Suman Mandal, Advocate

Counsel for Respondent No. 4: Mr. Shivendu Joshi, Advocate

Counsel for Respondent No. 6: Mr. Ajay Gupta, Advocate

Dated : March 26th, 2014

J U D G M E N T

1. This Application has been filed by one, Smt. Mithlesh Bai Patel who claims that she is an elected Sarpanch of Village Pratappur, Tehsil Siroha, District Jabalpur and she is filing this Application in larger public interest on behalf of the villagers of Pratappur. She says that she is challenging the order dated 15th May, 2013 in Reference No. F3-7/07/12/2 (Annexure P/8) issued by the Under Secretary, Department of Mines, Government of Madhya Pradesh whereby a Prospecting License (in short referred to as 'PL') for prospecting laterite mineral has been granted in favour of Respondent No. 6 over an area of 5.42 hectares out of the total extent of 9.85 hectares land in Khasra No. 413 of village Pratappur, Tehsil Siroha, District Jabalpur. It is stated that this is a government land under the control of the Revenue Department and there is a dense tree growth with approximately 397 Mahua trees standing in the area allotted for PL and the villagers are having *Nistar* rights over the land. It falls under the definition of 'Forest' as given under Section 2 of the Forest (Conservation) Act, 1980. She further states that No Objection Certificate (in short referred to as 'NOC') was not

obtained from the Forest Department before granting the PL. Initially an application for granting PL for mining iron ore, filed by one, M/s Anand Mining Corporation was recommended by the Government of Madhya Pradesh and PL was granted in their favour but having objected by the villagers, the lease holder could not commence any mining work. Subsequently an application was filed seeking grant of Mining Lease (in short referred to as 'ML') for mining of iron ore over a period of 30 years by M/s Ind Synergy Ltd. However, as the villagers objected, that application was not considered by the Government of Madhya Pradesh for recommending the case to the Central Government and in this regard a Public Interest Litigation (in short referred to as 'PIL') by way of Writ Petition No. 830/2009 was filed by one, Shri Anadilal Sen before the Hon'ble High Court of Madhya Pradesh (Annexure P/1) wherein the Hon'ble High Court vide order dated 4th March, 2009 (Annexure P/2) issued notice to the Respondents and ordered that in case the Central Government grants approval for ML, the Petitioner is at liberty to move the Court for appropriate interim relief.

2. The Applicant further stated in her application that under Mahatma Gandhi NREGS, the Gram Panchayat Pratappur has planted approximately one thousand trees in the said piece of land in Khasra No. 413 during the year 2011 by investing an amount of about Rs.1.48 lakhs. But the Respondent No.6 uprooted the plants and a complaint in this regard was made before the District Collector, Jabalpur vide complaint dated 13th September, 2011(Annexure P/4) but no action was taken by the Collector and it was informed by the office of the Collector that no such application is pending in their office in respect of the aforesaid land for mining purpose (Annexure P/5). The Divisional Forest Officer, Jabalpur vide his letter dated 1st May, 2007 informed the District Collector that 397 Mahua trees are standing in part of Khasra No. 413 in an area of 5.42 hectares (Annexure P/5). When the matter was referred to the SDM, Siroha, it was reported that the land

situated in Khasra No. 413 is not fit for mining activities. (Annexure P/6). When NOC was sought from the Forest Department for granting mining lease in Khasra No. 413 and a letter dated 29th October, 2011 was addressed to the Secretary, Mining Department, Government of Madhya Pradesh that this particular piece of land is not a forest land (Annexure P/4)

3. Thus the Applicant has stated that the issue of granting ML for iron ore was taken up twice in the above piece of land and the PIL filed is still pending before the Hon'ble High Court and no NOC was issued by the Forest Department for granting ML. She contended that in order to by-pass the orders of the Hon'ble High Court subsequently an application was moved seeking PL for mining laterite mineral instead of iron ore and accordingly the aforesaid order dated 15-5-2013 was issued by the Government of Madhya Pradesh granting PL to the Respondent No. 6. She further states that earlier vide memo dated 3rd February, 2007 the then District Collector, Jabalpur had submitted a report to the Secretary, Mining, Government of Madhya Pradesh stating that there are 694 Mahua trees standing in Khasra No. 413 and it is not suitable for granting ML (Annexure P/7). Thus, the Applicant lamented that due to negative reports sent from the office of the District Collector, Jabalpur and inspite of the fact that the land in question is having such large number of Mahua trees, the Government of Madhya Pradesh granted PL over an extent of 5.42 hectares in Khasra No. 413 for laterite mining in favour of Respondent No. 6 (Annexure P/8). It was further stated by the Applicant that a close look at the order dated 15th May, 2013, gives an impression that the mineral limestone is expected to be found rather than laterite and there is neither laterite nor limestone deposits in the said piece of land except iron ore but to circumvent the Hon'ble High Court order, the PL was granted for prospecting laterite since it is only the Central Government which is competent to grant ML in case of iron ore mining and thus an incorrect and false mineral has been mentioned in the order

granting PL and there is no clear NOC issued from the Forest Department. The Applicant expressed her concern that if mining activity is taken up in the said piece of land, it will not only lead to removal/damage of the huge number of existing Mahua trees but it will also affect the ecology and environment in the area besides robbing the livelihood opportunities of the villagers as they are presently collecting the Minor Forest Produce (MFP) from the Mahua trees. In support of her claim, she filed photographs depicting tree growth in the said piece of land (Annexure P/9). She further alleged that though the Respondent applied for iron ore mining surprisingly PL was granted for laterite mining and this is a deliberate act on the part of Respondent government to bypass the law. It was further stated that the land in question bears approximately 5.13 million tons of iron ore deposits as per the survey conducted by the Geological Survey of India and ultimately it is not the laterite or limestone but the iron ore that will be mined from the area. She prayed that though the land is a Government land, the Respondent No. 6 should not have been granted PL for mining brushing aside the objections raised by the villagers and thus she had no alternative except to approach this Tribunal seeking justice. She pleaded that the impugned order dated 15th May, 2013 should be quashed immediately.

4. Upon registration of the Application, notices were issued to the Respondents and interim stay was granted on 18th July, 2013 on the operation of the impugned order.

5. The Respondent Nos. 1 to 5 in their reply have stated that the land in question in Khasra No. 413 is not a forest land. In view of the orders of the Hon'ble Supreme Court dated 12th December, 1996 in the matter of *T.N. Godavarman vs. Union of India* (1997) 2 SCC 267 and as per the Circular No. 16610/7/1-A dated 13th January, 1997 (Annexure RI-1) issued by the Revenue Department, Govt. of Madhya Pradesh wherein on the recommendation of the

Expert Committee the following criteria has been fixed to declare the tree clad areas in the state as 'Forest' but not yet notified as 'Forest' under any Act and not recorded as 'Forest' in Government records : -

- i. The extent of area should be 10 hectares or more ;
- ii. On an average the area should consist atleast 200 naturally growing trees per hectare;

6. The Respondent Nos. 1 to 5 further stated that the govt. land in Khasra No. 413 is less than 10 hectares in extent and it was further divided into restricted and unrestricted parts. The restricted part is of 4.43 hectares while the unrestricted part is 5.42 hectares and the Respondent No. 6 has been sanctioned PL for mining over the unrestricted area. Therefore the contention of the Applicant that the land is a forest land, is misconceived and it does not qualify to be brought under the provisions of the Forest (Conservation) Act, 1980. The unrestricted area where the PL for mining was granted, consists 303 Mahua trees which becomes on an average 56 Mahua trees per hectare. It was further stated in the reply that the State Government has not sanctioned the PL in favour of the Respondent No. 6 in suppression of earlier orders but the PL was sanctioned in accordance with law within the purview of Section 11(2) of the Mines & Minerals (Development & Regulations) Act, 1957 considering the preferential rights of the Respondent No. 6 after giving opportunity of hearing to all the parties. The relief sought by the Applicant is premature because it is only the PL that has been granted in favour of the Respondent No. 6 and no permission was granted for cutting the Mahua trees as prospecting of mineral does not require cutting of trees. It was further stated in the reply that MLs were sanctioned in the areas adjacent to the land in question and this application was filed on the instigation of those mine owners whose mines are located adjacent to Khasra No. 413.

7. As directed by the Tribunal, the counsel for the State of Madhya Pradesh filed the report of the Expert Committee constituted in pursuance of the directions of the Hon'ble Supreme Court in the case of *T.N. Godavarman vs. Union of India (supra)* copy of which has been furnished to the learned counsel for the Respondent No. 6 as well as to the Applicant. A perusal of the report of the Expert Committee indicates that Government lands measuring a total of 16,616.80 hectares are outside the control of the Forest Department but having tree growth and falling in 295 nos. of Khasras located in 146 villages in Jabalpur District and they meet the aforesaid criteria and qualified to be declared as 'Forest'. Thus they are eligible to be brought under the definition of 'Forest' irrespective of their ownership. However, the Khasra no. wise and village wise details were missing in the report. Therefore, the learned counsel for the State of Madhya Pradesh was directed to produce particulars of villages and Khasra numbers where such 'Forests' were identified by the Expert Committee to know whether this particular Khasra No. 413 in village Pratappur finds place in the list or not. The District Collector, Jabalpur in his affidavit dated 28th February 2014 stated that village Pratappur does not find place within the list of 146 villages where 'Forest' was identified by the Expert Committee and therefore the govt. land in Khasra No. 413 is only a revenue land and does not fall under the definition of 'Forest' and therefore Forest (Conservation) Act, 1980 is not applicable in this case. The Collector further stated that as per the provisions under Section 2 of the Madhya Pradesh *Adim Janjatika Sanrankshan (Vrikshonka hith) Adhiniyam*, 1999 which lays down the list of special category trees including Mahua tree at Entry No. '7' and Section 240 of the Madhya Pradesh Land Revenue Code, 1969 confer powers to the District Collectors to permit cutting of any standing tree including that of Mahua tree. The Collector further stated that the Mahua trees existing in Khasra No. 413 are not the exclusive source of livelihood for the tribals in the area and the PL for mining was

granted by the Government of Madhya Pradesh taking into account of the above facts and as mining of minerals is essential for the development of the State of Madhya Pradesh and the country as a whole.

8. The Divisional Forest Officer, Jabalpur was present before the Tribunal and filed an affidavit dated 1st March, 2014 stating that the land in question is a revenue land and not a forest land.

9. The Respondent No. 4 i.e. Madhya Pradesh State Pollution Control Board (MPPCB) filed their reply stating that no application has been received from the Respondent No. 6 for granting any permission for mining and if any such application is required for granting permission under the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 it will be examined after inspection of the site. It was further stated by the MPPCB that under the EIA Notification dated 14th September, 2006 under the schedule of projects or activities requiring Environment Clearance (EC) the activity of prospecting of minerals is exempted and therefore no EC is required for granting PL in this case. However, the Officer-in-Charge of the area of the MPPCB inspected the site and observed that few pits/holes have been dug up in the site and neither there is any damage caused to the environment nor is any activity going on there. It was further stated that the MPPCB has specifically directed the Respondent No. 6 that without obtaining written consent from the PCB no mining activity shall be undertaken in the area.

10. The Respondent No. 3 i.e. Central Pollution Control Board (CPCB) in their reply has stated that they do not issue any consent/license/NOC/EC/FC in such cases and Prior EC is required to be given by the MoEF/SEIAA depending upon the category of project as specified in EIA Notification dated 14th September, 2006 and 'Consent to Operate' and 'Consent to Establish' is granted by the concerned State Pollution Control Board under the Water (Prevention & Control of

Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 and therefore the CPCB has got no role to play in this case.

11. The Respondent No. 6 filed his reply dated 19th September, 2013 stating that the adjudication of the matter as to whether the PL has been rightly granted or not, is outside the purview of this Tribunal as the National Green Tribunal Act, 2010 provides that this Tribunal shall have jurisdiction over all the civil cases where substantial question relating to environment is involved and such question arises out of implementation of the enactments specified under schedule-I of the National Green Tribunal Act, 2010. In this particular application no civil case involving substantial question relating to environment has been raised by the Applicant. It was further stated that the Applicant is under the wrong notion that because the land in Khasra No. 413 is having Mahua trees it falls within the definition of 'Forest' and PL has been granted in violation of the Forest (Conservation) Act, 1980. The Respondent No. 6 averred that the land in question is not a Reserved Forest and as per the recommendations of the Expert Committee constituted consequent to the orders of the Hon'ble Supreme Court in the case of *T.N. Godavarman (supra)* this particular piece of land has not been declared to come under the definition of 'Forest' and hence Forest (Conservation) Act, 1980 is not applicable. It was further stated in the reply that PL was granted only over an area of 5.42 hectares in Khasra No. 413 and not for the entire area of 9.85 hectares and it was also denied that the villagers have got any *Nistar* rights over the land which is a revenue land and no Mahua usufruct is being collected by the tribals from the trees occurring in the said piece of land. It was further stated by the Respondent No. 6 that presently it is not sure whether the land in question has got any iron ore deposits and no PL was granted in favour of M/s Anand Mining Corporation for iron ore mining. However, the Government of Madhya Pradesh recommended the case of M/s Ind Synergy Limited to the Government of India for

granting lease for 30 years for mining of iron ore in Khasra No. 413 over an extent of 5.42 hectares but the said recommendation was not confirmed by the Government of India as the Government of India came to the conclusion that there is no material on record to suggest that iron ore deposits occur in the area and no prospecting of mineral has been done earlier for the purpose of iron ore. It was mentioned as virgin area and thereafter the Central Government directed the State Government to look into the matter and take a fresh decision. Orders dated 8th November, 2010 passed by the Central Government under Section 30 of the Mines & Minerals (Development & Regulations) Act, 1957 are annexed by the Respondent at Annexure R-6/2 and R-6/3. Thereafter, the State Government duly considering all the relevant facts decided to grant PL to Respondent No. 6. It was further stated by the Respondent No. 6 that M/s Ind Synergy Limited filed Writ Petition No. 12062/2011 and 12063/2011 before the Hon'ble High Court of Madhya Pradesh at Jabalpur challenging the order of remand made by the Central Government and vide order dated 16th May, 2012 the Hon'ble High Court dismissed the above petitions (Annexure R6/4). With regard to the PIL filed by Sri Anandilal Sen, it is stated that the PIL was filed in the year 2009 against the order dated 4th October, 2008 of the govt. of Madhya Pradesh by which it was recommended for granting ML for iron ore in favour of Ind Synergy Ltd. However, the Hon'ble High Court has not granted any stay as agreed by the Applicant herself. The Respondent No. 6 averred that perhaps the writ petition must have been rendered infructuous as the Central Government remanded the matter back to the State Government by not accepting the recommendation of the state Government.

12. The Respondent No. 6 further denied that the villagers have planted trees in the land in question under NREGS and no such plantation is existing at the site. The alleged filing of the complaint by the Applicant to the District Collector is

only a motivated one and the allegations made therein by her are incorrect. It was further stated that SDM, Siroha only wrote a note sheet on the objections raised by the villagers and not recommended to the Collector that ML should not be granted. Nevertheless, the said objections raised by the villagers were not accepted by the District Collector. Thus ML was recommended by the State Government in favour of M/s Ind Synergy Ltd. in the year 2008 and though the Applicant is aware of it, she has deliberately hidden this fact. Respondent No. 6 further contended that without prospecting of mining being taken up the question of concluding that the said land is harbouring iron ore deposits does not arise and accordingly the Government of India has mentioned in its order that there is no evidence on record to show that the land in question has got iron ore deposits. Therefore, considering all the aspects, the State Government has granted PL for laterite mining to the Respondent No.6. Therefore, only after prospecting is done, it can be ascertained whether the land has got laterite deposits or not. Therefore, it is incorrect on the part of the Applicant to say that the land in question does not consist laterite deposits. The Respondent No. 6 in his application for granting PL clearly stated that it is for prospecting laterite only and just because that few trees are existing on such piece of land which does not qualify to be brought under the definition 'Forest', such activity of granting PL cannot be denied. Any piece of land lying idle for a long period will allow tree growth to come up and simply because few trees have come up on the site in question the plea that no permission shall be granted there for mining activity, is not correct. Moreover prospecting of mine does not require cutting of trees. It was also stated that the Forest Department has not raised any objection and based on the recommendations of the District Collector, the PL was granted by the government and no public places of worship are located in the said piece of land as revealed from the report of the District Collector. Only after the prospecting is completed, application for granting ML

shall be made and Government at that time would examine all the aspects and would impose the terms and conditions including compensatory afforestation if required *in lieu* of the cutting of trees and presently it is only for the purpose of prospecting of mineral and no tree is required to be cut and after prospecting is done, the Government would take a conscious decision as to whether it is necessary to allow mining of the mineral if found located and if required, take up compensatory afforestation on alternate site to compensate the loss of trees existing on the land in question. It was also averred that it is incorrect to say that the aforesaid Mahua tree are the only source of livelihood for the villagers. In the circumstances the Respondent No. 6 prayed for dismissal of the OA.

13. In response to the reply dated 19th September, 2013 of the Respondent No. 6, the Applicant filed rejoinder dated 9th October, 2013 stating that she is challenging the government order on the grounds of disturbance of ecological balance which may occur due to felling of such large number of grown up Mahua trees which are more than 100 years old and it involves a substantial question relating to environment and if the prospecting of mineral is permitted it may lead to subsequent granting of ML and therefore it may be inevitable to fell such large number of trees. It was wrongly stated by the Respondents that the area does not qualify to be declared as 'Forest'. It contains about 397 Mahua trees and the orders of the Hon'ble Supreme Court in the case of *T.N. Godavarman (supra)* dated 12th December, 1996 are applicable to this particular piece of land and it does qualify to be recorded as 'Forest' where no non-forest activity can be permitted to be taken up. The Applicant further stated that to favour the Respondent No. 6 the authorities deliberately bifurcated the land in Khasra No. 413 to demonstrate that the trees in that particular portion of land where PL is granted in Khasra No. are less in number. PL for mining was granted over 5.42 hectares though initially Respondent No. 6 applied the PL over the entire 9.85 hectares of land in Khasra

No. 413. It was further stated that the contention of the Respondent No. 6 that there is no material on record to suggest occurrence of iron ore deposits in the said land, is not correct and in fact the Government of Madhya Pradesh while addressing the Secretary, Department of Mines, Government of India stated that as per the estimates made by the Geological Survey of India, the availability of minor mineral laterite and major mineral iron ore over the said piece of land has been established and the expected quantity of iron ore deposits is approximately 5.13 million tons and the Central Government has only remanded back the matter to the State Government to comply with the norms of principles of natural justice without commenting upon the minutes of the case whether existence of iron ore deposits as stated by the Government, was proved or not. It was further contended by the Applicant that in case of granting PL for a minor mineral Madhya Pradesh Minor Minerals Rules, 1996 come into play and as per Rule 18 of the said rules on receipt of any application the details shall be first circulated on the notice board of Zila Panchayat, Janpad Panchayat and Gram Sabha but in this case this mandatory provision has been not followed. It was also stated that in Madhya Pradesh Minor Minerals Rules, 1996 it is provided that no lease shall be sanctioned without obtaining opinion of the concerned Gram Sabha but in the instant case no such exercise has been done.

14. The counsel for the Applicant in his objections on behalf of the Applicant in response to the Miscellaneous Application No. 140/2013 filed by the Respondent No. 6, has contended that Madhya Pradesh (Prohibition or Cutting of Trees) Rules, 2002 prohibit cutting of trees on hilly grounds. As per rule 5 cutting of Mahua trees without permission of the District Collector in consultation with Gram Panchayat is prohibited and in the instant case the trees are standing on hilly terrain. It was also stated that as per the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 the tribes consisting

about 100 families residing in the village come under the category of forest dwelling tribes and the said Mahua trees are the source of their livelihood and therefore no permission shall be granted for mining.

Discussion

15. Having gone through the averments made by the Applicant and replies submitted by the Respondents and having heard the learned counsel for the parties at length and after perusing the record placed before us it is required to examine the following questions in detail : -

- (i) Whether the State Government is competent to grant PL for mining of minor mineral laterite in the Government land where it has earlier recommended to the Central Government for granting ML for iron ore which is a major mineral and why initial granting of iron ore mining over a period of 30 years to M/s Ind Synergy Ltd. was cancelled by the Government ?
- (ii) Whether the land in question is qualified to be defined as 'Forest' and does it attract the provisions of the Forest (Conservation) Act, 1980 ?
- (iii) Whether there are any Rules/Orders/Notifications prohibiting cutting of Mahua trees as they are one of the important sources of collection of MFP by the tribals and other traditional forest dwellers irrespective of their location on the Government lands other than notified forests or private lands and objections raised by the villagers for granting PL in government land has any legal validity?

We may examine each of the above 3 points in detail as follows.

16. Point No. (i) : -

Initially the Applicant filed this OA challenging the impugned order dated 15th May, 2013 granting PL for prospecting of laterite mineral over Khasra No. 413 in Pratappur village over an extent of 5.42 hectares. Later on, in the MA and

rejoinders filed by her, the Applicant contended that as the issue involves substantial question relating to environment she is challenging the order and she is not just challenging the order granting PL *per se*. This Tribunal can go into the issues concerning the environment and if any decision taken or order issued by the Government or any other authority under any of the existing Acts or Rules that affects the environment, it can be examined and in this particular case the PL is granted by the state government under MP Minor Mineral Rules 1996. However the fact is that initially the State Government recommended to the Government of India for granting of ML for iron ore mining over the same piece of land in Khasra No. 413 but the proposal was returned back to the State Government and it clearly reveals that the State Government took a decision to grant the PL for laterite which is a minor mineral and comes under the purview of the State Government and the Respondent/Government Authorities could not explain convincingly as to why it was agreed to grant PL for laterite mining when initially ML was proposed to be granted for iron ore mining to M/s Ind Synergy Ltd. However, this issue doesn't come under the purview of this Tribunal

The main issue to be considered here is whether there is any violation of environmental laws in granting the PL. Therefore, this Tribunal need not go into the correctness or otherwise of the decision of the state government in granting PL for laterite over the same piece of land where initially it recommended granting of ML for iron ore mining which is a major mineral. Nevertheless, the concern raised by the Applicant that mining activity over the said piece of land involves substantial question relating to environment will not get altered irrespective whether it is mining of iron ore or laterite. Therefore, this Tribunal need not go into the merits of granting PL for laterite mining or ML for iron ore mining. The Applicant may raise this issue with the appropriate authority/ court of law if she

finds violation of any Act/rules concerning granting of mining leases by the state government.

17. Point No. (ii) : -

The record placed before us reveals that the land in question is neither a notified forest nor recorded as 'Forest' in revenue/village records. It is a revenue land consisting tree growth. As per the recommendation of the Expert Committee, constituted by the state government in consonance with the Hon'ble Supreme Court orders in the case of *T.N.Godavarman (supra)*, the land is not qualified to be defined as 'Forest' since it did not fulfil the criteria recommended by the Expert Committee constituted in terms of the order dated 12.12.1996 of the Hon'ble Apex Court. Therefore it can be safely concluded that the Forest (Conservation) Act, 1980 is not applicable to the land in Khasra No. 413. The contention of the Applicant that as per the Hon'ble Supreme Court order the meaning of the definition of 'Forest' shall *ipso facto* be applied to this particular piece of land, is not agreed to since on the basis of the orders of the Hon'ble Supreme Court the State Government has constituted the Expert Committee which identified areas outside the purview of the Forest Department and which are not recorded as 'Forest' in revenue/village records but bear tree growth and it is found that this particular Khasra No. does not fulfil the criteria and therefore not included in the recommendation of the Expert Committee. Thus the question of application of Forest (Conservation) Act, 1980 does not arise in this case.

18. Point No. (iii) : -

In exercise of the powers conferred by Sub-Section (1) and Clause LXI of sub-section (2) of Section 258 read with sub-section(1) of Section 240 of the Madhya Pradesh Land Revenue Code, 1959 the State Government issued Madhya Pradesh (Prohibition or Regulation of the Cutting of Trees) Rules, 2007 wherein certain restrictions have been imposed on cutting of trees. The trees shall not be cut

without the permission of concerned Tehsildar on the recommendation of Gram Panchayat level committee. However, the rules prescribe that the trees standing on unoccupied Government land shall not be cut without granting permission in writing by the District Collector and there is no provision of complete ban of cutting Mahua trees standing on Government lands as per the above Rules. The District Collector is having powers to accord permission to cut the Mahua trees under the said Rules. As per the *Madhya Pradesh Lokvaniki Adhiniyam, 2001* there is a provision to regulate and facilitate management of tree clad private and revenue lands in the State of Madhya Pradesh wherein felling of trees shall be permitted if management plan is prepared and approved by the competent authority and there is no ban on cutting of Mahua trees. The Applicant did not produce any other order/notification or rule either in the OA or in the subsequent additional applications or rejoinders filed during the course of hearing to the effect that there is a total ban on cutting of standing Mahua trees or any restrictions imposed in the state of Madhya Pradesh. No document was placed before us to the effect that rules have been enacted by the state of Madhya Pradesh declaring the Mahua trees under the category of 'Reserved trees' and they are prohibited from being cut. The rules placed before us reveal that there is a provision of granting permission for cutting Mahua trees. However, in this particular case only PL for mining laterite was granted and no permission was sought or granted for cutting of trees existing on the said piece of land. PL involves only digging holes/small pits on the ground for extracting the mineral samples to arrive at the nature of mineral deposits and their quantity and no felling of trees is required for the purpose.

19. With regard to application of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in this case it is found that this Act is not applicable here as the land in question is located neither in a notified scheduled area nor any individual or community rights accrue to the villagers for

granting forest rights over a piece of land which is not notified as forest and the land in question doesn't qualify to be brought under the definition 'Forest'.

20. Therefore, mere sanctioning of PL *ipso facto* does not entail the lease holder to undertake regular mining by clearing the vegetation. The apprehension of the Applicant in this regard is unfounded. Eventually if cutting of trees is required at the time of regular mining, if permitted subsequent to prospecting, it is for the authorities to examine whether it is required to sacrifice such large number of Mahua trees and if so what measures can be taken to compensate the loss of trees. So far no evidence is produced before us that the Respondent-6 resorted to cutting of trees and inspection by the officials of PCB also revealed that no such activities have been taken up. The photographs placed before us also reveal that the said land in Khasra No. is not located on a hilly terrain but it is more or less plain.

21. In conclusion we may observe that though it is for the State Government to examine the issues in totality including the resolutions passed by the Gram Sabha and objections raised by the villagers before granting the PL it is left to the authorities to take the aforesaid observations into account if subsequently ML is granted based on the result of the prospecting of mineral. But in the existing circumstances since it does not come under the category of 'Forest' there is no law prohibiting PL in the said piece of land in Khasra No. 413. Further no information was produced before us as to how much quantity of usufruct is being obtained from the Mahua trees by the villagers and how much dependence they have on these trees for their livelihood and it is for the authorities to examine how to compensate in case the villagers' livelihood is going to be affected if in future these trees are permitted to be cut at the time of granting ML, if granted. The EIA Notification, 2006 requires the Applicant to seek Environmental Clearance (EC) from MoEF/SEIAA at the time of seeking granting of ML and therefore Environment Impact Assessment (EIA) study may be required to be conducted and

all the aspects related to the environment and ecology including the existence of Mohua trees on the land in question will have to be examined by the concerned authorities which will take care the concern of the Applicant.

22. While the objective of granting PL for mining is for systematic development of minerals which forms part of the development process of the country, it is the duty of the Central Government and the State Government to take steps to protect the environment and maintain the ecological balance and prevent damage that may be caused by prospecting and mining operations. The Hon'ble Supreme Court in the case of *M.C.Mehta vs. Union of India*, {2009} 6 SCC 142} while stressing the need for regulating the mining activities in a sustainable way in view of the large scale environmental concerns raised across the county and also to prevent further environmental degradation, *inter alia*, held that;

“.....Mining within the principles of sustainable development comes within the concept of ‘balancing’ whereas mining beyond the principle of sustainable development comes within the concept of ‘banning’. It is a matter of degree. Balancing of the mining activity with environment protection and banning such activity are two sides of the same principle of sustainable development”.

23. Thus it is mandatory on the part of the authorities to apply the principle of Sustainable Development and therefore any person applying for undertaking mining operations for both major and minor minerals is required to take prior EC from the authority concerned i.e. MoEF at the central level or State Environment Impact Assessment Authority (SEIAA) at the State level. Hence in future if ML is going to be granted over the land in question after the prospecting is done, the authorities shall take into account of the issues raised by the Applicant in this OA along with the EIA report.

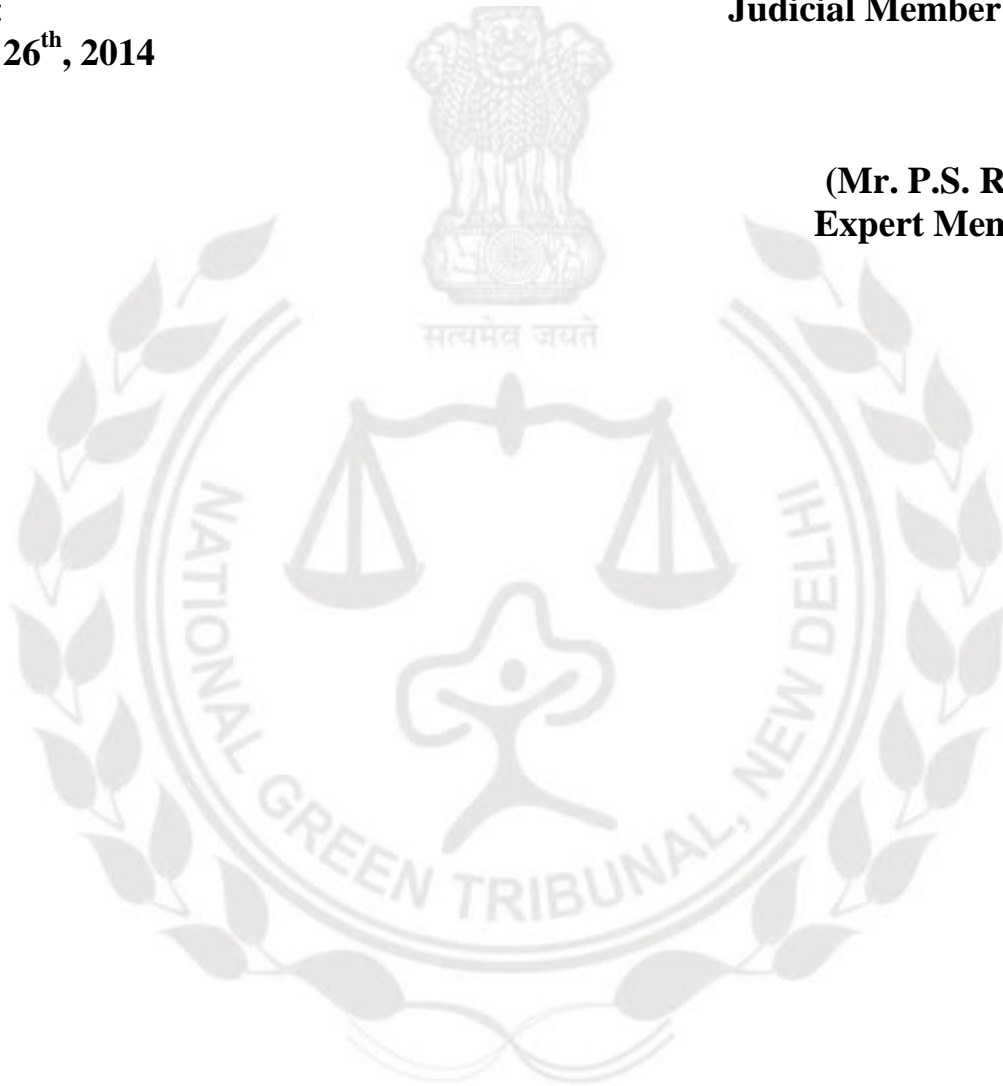
24. With the above observations we have no hesitation to dismiss the OA and accordingly the OA stands dismissed. In the facts and circumstances of the case we direct no order as to costs.

25. However, the Applicant has got full liberty to approach the appropriate forum/authority/court of law if ML is granted to the Respondent No. 6 based on the outcome of the prospecting of mineral in violation of any law.

Bhopal:
March 26th, 2014

(Mr. Justice Dalip Singh)
Judicial Member

(Mr. P.S. Rao)
Expert Member



NGT