



Mr. Mohit Gupta, Dy. Conservator of Forest - D.F.O.

Mr. Atul Prakash, Commissioner, Municipal Corporation (North), Jodhpur.

Mr. Utsah Choudhary, Commissioner, Jodhpur Development Authority, Jodhpur.

Mr. P.S. Choudhary, Zonal Chief Engineer, Jodhpur Discom.



HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

05/03/2024

1. The Coordinate Benches in this case has passed stringent directions repeatedly for protection of the particular forest block, which includes seven segments i.e. (i) Beriganga, (ii) Bhuteshwar, (iii) Machia, (iv) Chanana, (v) Motisara, (vi) Lalsagar and (vii) Devkund.

2. Based on the information provided, on the earlier occasion, the presence of senior officers of the State, who are present in person before this Court today, was considered crucial and indispensable so as to ensure a complete resolution of the matter in a comprehensive manner. In their presence, Mr. Rajendra Prasad, learned Senior Advocate & Advocate General, along with Dr. Praveen Khandelwal, AAG and Mr. B.L. Bhati, AAG and other counsel, have assisted the Court.

3. Learned Advocate General has addressed this Court at length and also apologized for the past inadequate actions and/or no action taken to protect the forest and for non-compliance with



previous Court orders. However, the learned Advocate General, assures this Court that if adequate time is granted, he will coordinate with all the organs of the State to pass appropriate orders to all the necessary parties and ensure that each and every party shall come out with their stand.

3.1 As per learned Advocate General, such coordinated efforts shall ensure that the matter regarding due and strict compliance shall be dealt with objectively and comprehensively, in the manner that the matter(s) as to which due and strict compliance has been made and the one in which such compliance will require some more time shall be reported to this Court separately, and the same shall be done, while adopting a specific time bound strategy, that would be brought on record by filing a consolidated affidavit of Additional Chief Secretary, Forest Department on the next date of hearing on behalf of all the officers of respective departments, owing to the nature of the issues involved herein.

4. This Hon'ble Court has consistently expressed its concern for the preservation and protection of forests as a valuable asset of the State and its citizens. Law recognizes the responsibility of the State in acting as a guardian and a custodian for forests, reflecting the spirit that forests need to be protected and nurtured. In our democracy and Constitution, the environment, nature, and forests hold a special place, and the commitment towards protecting and preserving the natural resources including forests, hills, water bodies etc. is an important measure for a country's progress. The Legislative, Executive and Judicial, the three pillars of the governance have repeatedly emphasized the seriousness of this



issue, but at the same time in the present case, despite repeated directions of this Hon'ble Court, there is a gross non-compliance.

4.1. It is also noted that such an approach on part of the concerned authorities of the State is the main cause of the total blatant lawlessness and lack of fear of law, on part of the violators (encroachers), and the same amply points towards, amongst others, the dereliction of duty of the said authorities, which deserves strict deprecation, more particularly, in light of the fact that comprehensive laws are already in place and further taking into account the various decisions of the Hon'ble Apex Court and as well as the High Courts of the country, from time to time to completely eradicate the menace of encroachment, from its roots. However, in the present case even after repeated orders/directions of this Hon'ble Court, the said authorities are not ensuring that the laws so enacted, to deal with the issues in question, are duly followed, and also the repeated directions of this Hon'ble Court are still awaiting their compliance.

5. This Court accepts the assurance given by the Advocate General. This Court is also conscious of the expertise of the State Executives in dealing with such situations, particularly in expanding urban areas.

6. The Court, at this juncture, takes note of the fact that Bhutan (a neighbouring country of India), in its Constitution envisages to reserve 60% of its country for forest cover and natural areas, thus sets an example of a modern and progressive society, striving towards sustainable development. However, this Court also recognizes the challenges posed by rapid urbanization



and the expanding urban population. The modern State must strive to strike a balance between the needs of its citizens and the environment, especially when the harmony between the two is disrupted by various factors, including astronomical land prices and inadequate implementation of legislative plans for identifying forests. Article 5 sub clause (3) of the Constitution of Bhutan, reads as follows:

"3. The Government shall ensure that, in order to conserve the country's natural resources and to prevent degradation of the fragile mountain ecosystem, a minimum of sixty percent of Bhutan's total land shall be maintained under forest cover for all time."

7. This Court takes note of the fact that in terms of the Delhi Urban Shelter Improvement Board Act, 2010, a Policy, namely, the Delhi Slum and JJ Rehabilitation and Relocation Policy, 2015 was framed by the Delhi Urban Shelter Improvement Board, as regards the matters pertaining to encroachments/illegal constructions, whereby it has been provided amongst others, that *"Government of National Capital Territory of Delhi has started procuring satellite maps every three months to keep an eye on any new constructions. New illegal constructions would be removed immediately."*

8. The affidavit presented today provides a one-time picture of the encroachments, but more detailed information is needed regarding the location and size of the encroachments, as well as the revenue records related to them. The revenue records are still pending updates. This Court has entrusted the Advocate General and the team of officers present in the Court today, with the responsibility of coordinating with each other to submit a



comprehensive plan. The plan should include details of the compliance that has already been achieved and proposed further steps for compliance, all in a time-bound manner.

8.1 Learned Advocate General seeks three months' time for completing such exercise. Such request made by learned Advocate General is being accepted.

9. Ms. Aparna Arora, Additional Chief Secretary (A.C.S.) Forest, Environment and Climate Change Department; Mr. Gaurav Aggarwal, District Collector, Jodhpur; Mr. Mohit Gupta, Deputy Conservator of Forest – D.F.O.; Mr. Atul Parkash, Commissioner, Municipal Corporation (South), Jodhpur; Mr. Utsah Choudhary, Commissioner, Jodhpur Development Authority, Jodhpur and Mr. P.S. Choudhary, Zonal Chief Engineer, Jodhpur Discom, assure this Court that they shall coordinate for preparation and production of such report with the other officers of the State of Rajasthan under the aegis of the Advocate General and the team to be constituted by the Advocate General, in pursuance of the present order.

10. In the present matter, all other departments including the Municipal Corporation, Jodhpur; Jodhpur Development Authority, Jodhpur and Jodhpur Vidyut Vitran Nigam Limited, Jodhpur shall meanwhile continue to make all their earnest and sincere endeavour to comply with the orders, which have been earlier passed by this Hon'ble Court, but at the same time, they shall be also required to update this Court as to the progress made by them, on the next date.



11. This Court is exercising all the restrain at its command so as to not make it too strict by issuing contempt notices to the State, but is still extremely worried about the manner, in which, the previous orders of this Hon'ble Court passed in the present petition have been dealt with. However, having regard and respect to the statement made by the Advocate General, this Court abstains itself from contemplating any strict action against the concerned authorities at this juncture, but in case, on the next date, if there is any failure on the part of the State in not abiding by the statement made by the learned Advocate General supported by the officers present, a very strict view of the matter is likely to be taken. The presence of the officers present in person before this Court today, shall remain exempted, until and unless, it is called for.

12. At this juncture, on the request of learned Advocate General, the Union of India is also impleaded as a party in this case.

12.1. Mr. Mukesh Rajpurohit, Dy.S.G. is accordingly directed to appear in this case on behalf of the Union of India.

12.2. Mr. Moti Singh, learned counsel appearing on behalf of the petitioner shall furnish, a complete copy of pleadings of this case, which are available with him, to Mr. Mukesh Rajpurohit, Dy.S.G. during course of the day.

13. The comprehensive affidavit, as assured by the learned Advocate General, is directed to be filed by the next date.

14. **While the aforesaid adjudication continues, this Court directs the respondents to evolve and adopt the scientific**



temper for dealing with the problems, which are arising continuously all over the State, akin to the current problem, whereby the natural resources in the shape of forests, reserve lands, hills, reservoirs and protected areas are directly in conflict with the ever expanding *Abadi* limits. It is thus directed that apart from the affidavit, which is to be filed in pursuance of this order, the State shall be required to comply the following directions and submit a separate compliance report through the learned Advocate General in this regard:

- (a) The State shall ensure procurement of a phased report pertaining to last 24 years, which can be on two yearly basis each, indicating, satellite mapping, high resolution satellite images/aerial photographs (by remote sensing techniques, Geo-tagging, Geo-Spatial mapping, Geo fencing, Geo-reference and/or any other kind scientific technique/scientific temper, to be utilized by the State to demarcate the territories of the preserved areas, which includes forest, hills and lakes for State of Rajasthan. For the said purpose, the State may utilize the services of certain experts, viz. Technocrats in IT Technology, experts in satellite mapping, Geo-tagging, data management and other technocrats, experts in civic administration and high level government officials having special knowledge and expertise in regard to the issues involved herein.



- (b) The State shall further ensure that these maps are regularly updated, ideally every six months. To ensure this, the State may appoint specific high-level officer(s) for this purpose.
- (c) The State shall employ the aforementioned scientific methods and tools to create a comprehensive base map, while granting permission for construction and sanctioning plans, if any. In order to delineate boundaries using the scientific methods mentioned above, the coordinates of the chosen areas will be recorded.
- (d) The aforementioned scientific methods and technologies will be utilized for surveillance and monitoring of specific areas that require continuous attention and protection. These methods will be particularly useful for monitoring water bodies, forests, mining areas, etc., where regular monitoring is needed to prevent illegal activities such as encroachment.
- (e) It is further made clear, as observed hereinabove, the State is required to act in a manner, that may reflect its being a welfare State and is committed to stand up to the expectation of even an ordinary citizen, who is staring at the State and its officials to administer a good governance, more particularly, towards the sustainable development, thereby balancing the equities between the nature, its resources and the ever increasing urbanisation.





15. On a joint request made by the learned Advocate General, learned counsel for the petitioner and the officers present in person, list the matter before this Court on 08.07.2024.



(MUNNURI LAXMAN),J **(DR.PUSHPENDRA SINGH BHATI),J.**

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