

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

SRI JUSTICE VIPIN SANGHI, C.J.
AND
SRI JUSTICE R.C. KHULBE, J.
23RD NOVEMBER, 2022

WRIT PETITION (PIL) NO. 44 OF 2020

Between:

Birendra SinghPetitioner.

and

Union of India and others.Respondents

Counsel for the petitioner : Mr. P.B. Suresh and Mr. Karthik.

Counsel for the respondents : Mr. Manoj Kumar, learned Standing Counsel for the Union of India / respondent No. 1.
Mr. Pradeep Joshi, learned Additional Chief Standing Counsel for the State of Uttarakhand / respondent No.2.
Mr. Vikas Srivastava and Mr. Akshay Pradhan, learned counsel for respondent Nos. 3 & 4.

Upon hearing the learned Counsel, the Court made the following

ORDER : (per Sri Vipin Sanghi, C.J.)

Vide our order dated 18.11.2022, we had directed the State to file a report in terms of the order dated 20.03.2020. On 20.03.2020, this Court took notice of the order passed by the Supreme Court on 11.02.2020 in Civil Appeal No. 8560 of 2018, whereby the Supreme Court disposed of the said Civil Appeal, preferred by the petitioner, herein, against the order dated 24.07.2018 passed by the National Green Tribunal dismissing his petition being O.A. No. 791 of 2017, by placing reliance on a Court Commissioner's report, appointed by it. In its order, the National Green Tribunal extracted a part of the detailed

report prepared by the Court Commissioner dated 09.07.2018.

2. The Supreme Court, while passing the order dismissing the Civil Appeal No. 8560 of 2018 on 11.02.2020, *inter alia*, directed that survey and demarcation be conducted within a period of 8 weeks from the date of the said order in respect of the area falling in three patches of the Jilling estate, wherein the density of forest appears to be 40% or more. The Court Commissioner has found that about 8.5 hectares out of the entire Estate, i.e. 36 hectares-constituting Jilling Estate, appears to have a high density of forest cover in the range of 40% or more. The Supreme Court directed the conduct of survey and demarcation in terms of the direction contained in Clause (vi) of the conclusions drawn in the report of the Court Commissioner Shri Bikram Singh Sajwan. The said demarcation was necessary to determine, whether the same would, eventually, be classified as "*Deemed Forest*" in terms of the judgment passed by the Supreme Court in ***T.N. Godavarman vs. Union of India and others*** [***WP (Appeal) No. 202 of 1995***, decided on 12.12.1996]; ***Lafarge Umiam Mining Pvt. Ltd. vs. Union of India*** (2011) 7 SCC 338 and; ***Anand Arya and another vs.***

Union of India and others (I.A.No.2609-2610 of 2009 in WP (Civil) No. 202 of 1995).

3. The State has filed, what is claimed to be, a Compliance Affidavit of the Divisional Forest Officer (DFO, Nainital). The said Affidavit has not complied with either Supreme Court's order, or our order, inasmuch as, no demarcation has been carried out. The only exercise carried out is to identify the different kinds of trees found in different Khasra Numbers.

4. In our view, the said non-compliance of the order of the Supreme Court as well as our order constitutes contempt of Court. The direction to carry-out survey and demarcation was issued by the Supreme Court as early as on 11.02.2020. However, before we proceed to take action under the Contempt of Courts Act against the erring officers, we consider it appropriate to grant them one more opportunity to strictly comply with the order passed by the Supreme Court as well as by us on 20.03.2020. Compliance be made positively within the next two weeks, and a report in that regard be filed soon thereafter.

IA Nos. 4401 & 4402 of 2022

5. Issue Notice.

6. Mr. Manoj Kumar learned Standing Counsel for the Union of India / respondent No. 1, appears and accepts notice.

7. Mr. Pradeep Joshi, learned Additional Chief Standing Counsel for the State of Uttarakhand / respondent No.2, appears and accepts notice.

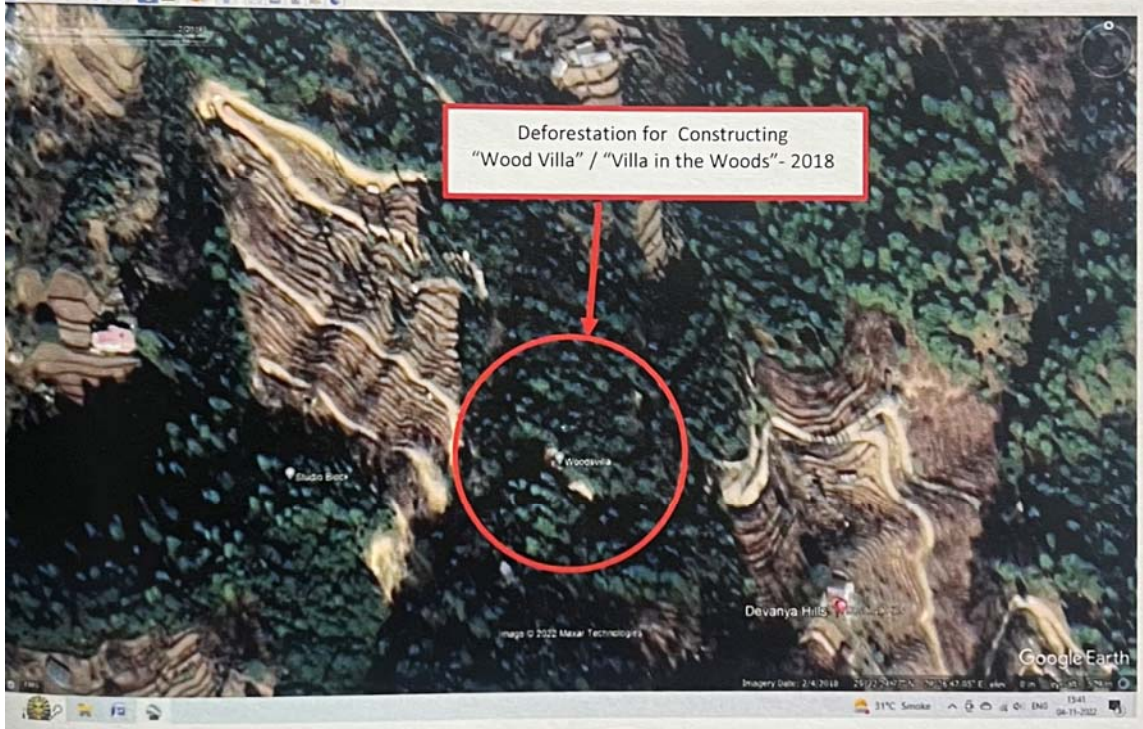
8. Mr. Vikas Srivastava and Mr. Akshay Pradhan, learned counsel for respondent Nos. 3 & 4, appear and accept notice.

9. Let replies to these Applications be filed by all the respondents within two weeks.

10. Rejoinder, if any, be filed before the next date.

11. The petitioner has placed on record, along with IA No. 4401 of 2022, the pictures of the Google Map of the area concerned. The position-which is shown to exist in 2015, 2018 and 2022 demonstrates that the green cover between 2015-2018 appears to have been substantially reduced. Even between 2018-2022, it appears that even in the area of having dense population of trees, roads have been constructed / broadened and extended.

12. Since we are looking at Google Map pictures, our conclusion, obviously, cannot be final. However, for prima facie evaluation, we certainly can take notice of these pictures. These pictures show that even in the dense tree cover area, developmental activity has been undertaken as the roads / paths appear broader, clearly defined, and extended in their length. The three pictures of 2015, 2018 and 2022 produced by the petitioner along with the Application at Page 290 of the record are as follows: -



13. The petitioner has also placed on record, along with IA No. 4402 of 2022, an Inspection Report dated prepared by the Surveyor, Geology and Mining Unit Haldwani. This shows that respondent Nos. 3 & 4 employed a JCB machine to carry-out development activities in the area. Admittedly, no permission to use the JCB machine was obtained by the said respondents, or the Contractor employed by them.

14. Learned counsel for respondent Nos. 3 & 4 states that JCB machine was used for seven days only for the purpose of leveling the ground. Consequently, a fine of Rs. 4 Lacs was imposed for the unauthorized use of JCB machine, which has also been paid by the respondents or their Contractor.

15. The Inspection Report prepared by the Surveyor, Geology and Mining Unit Haldwani, notes that sanctioned map and documents were not produced at site sanctioned by the competent Authority for the project in that area. To this, the submission of the learned counsel for respondent Nos. 3 and 4 is that since the site in question is at a distance of more than 200 meters from the Highway, no sanctioning of plan is required by the respondents.

16. Considering the aforesaid aspects, since the issue of Deemed Forest in the area admeasuring 8.5 hectares or

thereabout, is still pending consideration and since *prima facie* it appears that respondent Nos. 3 and 4 have carried out development activities, including in the said 8.5 hectares' area, which has dense tree cover in excess of 40%, we are inclined to direct a fresh inspection of the entire Jilling Estate to be conducted, so that a report is available for the Court to proceed further in the matter.

17. We were inclined to appoint Shri Bikram Singh Sajwan as the Court Commissioner, since he had conducted the earlier inspection as a Court Commissioner, and he has first-hand knowledge of the topography and the characteristics of the area. Unfortunately, he is not in a position to complete the task early, and would require 6 to 8 weeks, as indicated by him to the parties today. Accordingly, we appoint Dr. Dvijendra Kumar Sharma, IFS (Retd.), R/o C-103, Ispatika Apartments, Sector-4, Plot No. 29, Dwarka, Delhi-110078 (Having Mobile No. 9899761167) as the Court Commissioner. The Court Commissioner shall carry-out the local physical on-the-spot inspection and furnish a report before us, particularly stating as to whether respondent Nos. 3 & 4 have carried-out any activity in the area admeasuring 8.5 hectares or thereabout, which may eventually be declared as a Deemed Forest. We also request him to inspect the development activities carried-

out by respondent Nos. 3 & 4 in the area falling outside the 8.5 hectares, but within 36 hectares constituting Jilling Estate, and to report whether the said developmental activities have been undertaken in violation of any of the norms/ Rules / Regulations, or without any permission, which they were obliged to obtain. The inspection shall be carried out by the Court Commissioner as early as possible, and the same be completed within the next two weeks. He shall be provided with all the relevant record by the parties, including the inspection report of Shri Bikram Singh Sajwan, who had earlier carried-out the local inspection. A responsible officer, nominated by the District Magistrate, Nainital; a Nominee of the Conservator of Forest, and the DFO, Nainital shall remain present when the inspection is carried-out, and all assistance shall be provided to the Court Commissioner for carrying-out the inspection. The Commissioner shall also have photographs taken, wherever he considers it necessary for explaining the report. The Court Commissioner shall not adjourn the proceedings on the request of either of the parties, or authorities, and they shall not seek any accommodation in that regard. The fees of the Court Commissioner is fixed at Rs. 2 Lacs to be shared equally by the petitioner on one hand, and respondent Nos. 3 & 4 on the other hand.

18. The representatives of the petitioner and respondent Nos. 3 & 4 shall also remain present during the inspection.

19. Till the next date, all further development / construction activities in Jilling Estate shall remain stayed.

20. Let notice issue to respondent No.5, returnable by 15.12.2022.

21. List on 15.12.2022. No adjournment shall be granted on the next date.

22. Liberty is given to mention on the next date, in case the case is lower down in the list.

VIPIN SANGHI, C.J.

R.C. KHULBE, J.

Dt: 23rd November, 2022
Rathour