

Item No.07

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(BY HYBRID MODE)

Original Application No. 578/2022

Ram Singh

Applicant

Versus

State of Uttarakhand & Ors.

Respondent(s)

Date of hearing: 08.08.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Respondent: Mr. Sandeep Tiwari, MD, KMVN with Mr. Maibam N. Singh & Mr. Ajit Rajesh, Advs.
Mr. Rahul Verma, AAG for the State of Uttarakhand
Mr. Mukesh Verma, Adv. for UKPCB

ORDER

1. Grievance of the applicant is installation of 5 FRO tourist huts during 2016 and 2017 in the mid of alpine area at the altitude of more than 12000 feet in Panchachuli mountains. Government Land comprised in Khasra no. 2630, 0.100 hectare situated in Village Dugtu was allotted by the District Magistrate, Pithoragarh to Tourism Department of Uttarakhand. In the Year 2017-2018, 2018-2019 and 2019-2020 more than fifty thousand tourists visited per year and on the weekends there were more than 50 tourists each day during May, June, September and October months and even extra tents were provided near the huts. The activities of the tourists in the area have affected the wildlife and biodiversity as musk deers which used to graze in the area no longer appear there. During May 2018, more than fifty thousand trees of Bhoj Patra and thousands of high altitude Rhododendrons, Himalayan

Devdar and several type of underbrush have been burnt. Directions were given by the High Court of Uttarakhand to the Chief Conservator of Forests, Uttarakhand and all DFOs but the directions are not being complied with.

2. The matter was taken up by this Tribunal and notices were issued to the respondents with direction to a joint Committee to submit a factual and action taken report.

3. The joint Committee submitted the report with the facts that 0.100 hectare of land in revenue record Plot No. 2630 was transferred and allotted to the Tourism Department and NOC was obtained from the Forest Department for construction of FRPs. The above huts were installed at the distance of 3-4 km which was reported by the concerned revenue officer. After order of the Tribunal, the lease holder Shri Ganesh Singh Dugtal was immediately informed to stop the operation of FRP huts with immediate effect. The State Government (Kumaon Mandal Vikas Nigam) has submitted the affidavit with the facts that:

- “5. That the State of Uttarakhand was carved out as 27th State on 09.11.2000 and the topography of the State is characterized by hilly terrain, rugged and rocky Mountains, deep valleys, high peaks, sharp streams and rivulets, rapid soil erosion, frequent landslides and widely scattered habitations and further 93% of the lands in the State of Uttarakhand is mountainous and further 64% is covered by the forest. Most of the part of the State is high Himalayan peaks and glaciers, while the lower foothills are densely forested.*
- 6. That apart from the peculiar geographical location there is peculiar aspect of the migration the persons residing in the hill, inasmuch as, there are meager facilities, lack of opportunity of employment and poor connectivity.*
- 7. That it is further submitted that the State is prone to all kind of disasters be it, earthquake soil erosion, heavy rain falls, landslides, cloudbursts and flash-floods and even forest fires and time and again the State has to face loss of infrastructure facilities, and life of persons.*
- 8. That considering these peculiar aspects every time when the policies for the development activities are conceived, these numerous aspects, the authorities consider and further due to the peculiar geographical location and tough working conditions in*

the hill area even **for construction** and operation of a small project several agencies are required to be roped in.

9. That the State of Uttarakhand has formulated the policies and schemes in such a manner that with regard to the decision regarding setting up of infrastructures facilities in connection with the tourism activities any communication with the State Government regarding the mode and manner for providing land finances and other facilities, Uttarakhand Tourism Development Board is the agency concern.
10. That even post creation of the project, maintenance and its operation is also a herculean task and the Kumaon Mandal Vikas Nigam and Garhwal Mandal Vikas Nigam are the government companies, which are entrusted with the responsibility to maintain and operate such infrastructure facilities, like tourist rest houses.
11. That the peculiar facts applicable in the present set of circumstances are that in June 2013 affectively all the hill districts of the State of **Uttarakhand have suffered unprecedented damages due to disasters and the Uttarkashi, Chamoli, Rudraprayag, Pithoragarh and Bageshwar were amongst most adversely affected districts in the disasters of June, 2013.**
12. That considering **the impact of the disasters, State of Uttarakhand** as well as the Government of India has approached the Asian Development Bank **for the assessment of the damages and for reconstruction and in response thereto a Joint Rapid Damage** and Assessment Team has carried out the inspection of the area affected between 29th July till 7th August 2013.
13. That post inspection and assessment of the situation the Asian Development Bank (ADB) sponsored project agency, Uttarakhand Emergency Assistance Project (UEAP), has provided for the construction of FRP Huts and Hybrid huts, in two disaster affected districts of Kumaon Region which are made up of eco-friendly fib er reinforced plastic.
14. That while the idea of the construction of FRP Huts and Hybrid Huts was initiated their need was considered by not only the Department **of Tourism but the disaster management authority of the State of Uttarakhand**, inasmuch as, these remotes hill area of the State of Uttarakhand are not connected through the modes of **telecommunication and it was idea** of the State Government that these huts will primarily be created to be used at the time of disaster.
15. That however, the disaster is not regular event and cannot be predicted and hence in order to maintain and up-keep of such huts, some mechanism was to be adopted and it was decided that these huts will be used to accommodate the tourists except in the case of disaster.

16. That it is a policy decision on the part of the State Government that at the time of disaster these huts will be **transferred to the disaster management authority and the district administration.**
17. That it is submitted that this important aspect was there even at the time of preparation of the detail project report and for facility of the learned Tribunal the relevant part of the Clause-9 is quoted herein under:-

"9. OPERATION & MAINTENANCE

B. Regarding FRP Huts/HYBRID Huts proposed other than within the premises of TRH it is proposed to lease out the developed asset for tourism business and day to day operation and maintenance to local people/local stakeholders committee. A MOU in this regard is proposed between the state authority (SDMAIUTDB) & local people/local stakeholders committee with following provisions:

- a. *The day to day operation and maintenance of the FRP Huts/HYBRID Huts shall be the responsibility of respective local people/local stakeholders committee.*
 - b. *During normal course of time the FRP Huts/HYBRID Huts can be utilized by the local people/local stakeholders committee for the benefit of Tourism.*
 - c. *During natural calamity/emergence time the dist1J- - administration will have the sole right for use of FRP Huts/ HYBRID Huts and local people/local stakeholders committee will adide by the instructions of the SDMA & District Administration regarding the use of FRP Huts/ HYBRID Huts.*
 - d. *The local people/local stakeholders committee will be required to pay lease rental charges to state authority (SDMAIUTDB)"*
18. That it is submitted herein that these huts were constructed for strengthening of disaster and risk management system of the state and for day to day operations and maintenance these FRP huts were handed over to Kumaon Mandal Vikas Nigam Limited and as per the provisions of DPR Kumaon Mandal Vikas Nigam Limited allotted these FRP Huts to local residents for the purpose of operation and maintenance through fair and transparent tender process.
 19. That it is also relevant to mention herein that this particular Dugtu Village was identified and selected on the recommendation of the District Administration, and the Uttarakhand Tourism Development Board and the requisite land was transferred by the State Government.
 20. That it is a small establishment and the land allotted or utilized is not in forest area even then for raising construction of even

such ecofriendly huts NOC from the department of forest was taken.

- 21. That it is submitted that these are not accessible area and considerable time was utilized when the proposal is conceived processed and finalized and this particular case when all these steps have been taken there were certain ecological disturbance in the land so identified there was a landslide over the portion of it and the rest part of it was sloppy which would have required more disturbance to ecology for construction and hence in the close vicinity of the aforesaid place , huts were constructed.*
- 22. That the authority concerned at the time of identifying this alternate location in the close vicinity of the original location must have completed paper formalities at the said point of time itself, however, for the reasons best known to them the paper formalities were not completed, however, it is relevant to mention herein that both the aforesaid places are the Government land, situated within the territorial limits of the same village and further having identical or substantially same ecological parameters and it can never be said that by construction of such eco-friendly huts ecological parameters of the area concerned are changed.*

xxxxxx.....xxx
- 28. That it is also submitted that the idea that was in the mind of the authorities of the State Government when the project was conceived affectively was considered by the committee constituted by Hon'ble National Green Tribunal, inasmuch as, the committee acknowledged that the aforesaid place is situated in Darma Valley of Pithoragarh situated in close proximity to China and further is not connected with the metaled roads. Further no proper telecommunication facilities are available and in the case of un-precedent disaster it is not easy to reach this particular place.*
- 29. That the committee has further considered that in order to provide opportunity of employment, steps must be taken for making homestays and to promote adventure tourism. The recommendation that has been made with regard to the establishment of check post for keeping eye on fire accident has no concern with the answering respondent, and has to be considered by the concern forest Department.*
- 30. That only Issue that required deliberation before the National Green Tribunal is that the said committee has recommended that these huts to be shifted to the Khasra numbers mentioned in the document of land transfer, however, considering the aforesaid anomalies it was felt that the necessary and appropriate steps be taken for the transfer of land over which the FRP Huts are constructed and accordingly the District Magistrate Pithoragarh vide order dated 19.04.2023 has transferred the land in favour of the Department of Tourism and further cancelled the earlier land allotment made and by such action the anomaly so crept in stands rectified.”*

4. It has been further submitted by the respondents, Kumaon Division that the above site is far from the paved road due to which better communication facilities are not available here 24 hours and it is not possible to provide immediate relief in case of any untoward accident, contingencies, **arson due to natural calamity, disaster and sensitive area of the border** and thus, the District Administration has decided to install these five huts to control and manage **under the Disaster Management Act and sensitivity of the border area.**

5. Under the Uttarakhand Emergency Assistance Project (Tourism Sector, Programme), 9 places in Kumaon district Bageshwar and 17 places in Pithoragarh district under F.R.P. The plan was prepared by the selected and appointed consultant for the installation of huts. Under the scheme, 9 places in Bageshwar were selected as Supi, Pakhwa, Jhuni, Dhakudi, Kafni, Badiyakot, Pindari, Bodbadla, and Kaithalia and 16 places in district Pithoragarh as follows. Gunji, Bundi, Kalapani, Nabidhang, Malpa, Mangti, Martoli, Panchhu, Barfon, Urthi, Leelam, Pangu, Sirkha, Gala, and Kutti were selected. Program Manager P.U. (Tourism Kumaon) in its letter no. 95/piu//uaap(t)kmwan/2016-17 dt. According to 20th May 2016 (letter attached-1), the district was informed that instead of 16 places in district Pithoragarh, R.D.B. Received approved by and total F.R.P. There has been no change in the number of huts (100 pieces), as well as due to the damage of the roads in the pre-identified sites and the lack of feasibility (useful) in the acquired land, the sites were changed, which are district-wise as follows:-

District	Previously Accepted	Changed Location
Bagheshwar	Pakhwa, Bodbadla, Kathliya, Pindari, Kafni, Dhakuri	Jaikuni, Sorag, Bachhamtok, Dhakuri, Phurkiya, Saarag, Tok Dhoor and Teekh

Pithoragarh	Paangu, Paanchhu, Sirkha, Leelam, Maangti and Urthig	Ganghar, Narayan Dugtu Vedaang	Raa lam, Ashram and
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On 31 May, 2016 H.P.C. (Letter enclosed) in the Minutes of the Meeting Resolution No. 4 to 5, as provided above mentioned for acceptance. In this order, the Pithoragarh District Administration has sent 0.100 hectares of land to the Tourism Department in the name of Pithoragarh in which 05 Nos F.R.P. Huts and 03 Nos. Toilets were constructed.

By the Corporation in the work planned by A.B.D. the land marked by Additional Engineer of Revenue Personnel at that time made available for F.R.P. Huts, which was completed by the Corporation on 10 October, 2018. Its information sent to Program Director A.B.D., UEAP Dehradun.

6. At the time of formation of the scheme, D.P.R. Provisions have been made as follows:-

“9. OPERATION & MAINTENANCE

- A. *Regarding FRP Huts/HYBRJD Huts proposed in the premises of TRH it is proposed to lease out the development asset for tourism business and day to day operation and maintenance to respective TRH. A MOU in this regard is proposed between the state authority (SDMA/UTDB) & TRH authority with following provisions:*
 - a. *The day to day operation and maintenance of the FRP Huts/HYBRID Huts shall be the responsibility of respective TRH.*
 - b. *During normal of time the FRP Huts/HYBRID Huts can be utilized by the TRH authorities for the benefit of Tourism.*
 - c. *During natural calamity/emergence time the district administration will have the sole right for use of FRP Huts/HYBRID Huts and TRH authority will abide by the instructions of the SOMA & District Administration regarding the use of FRP Huts/HYBRID Huts.*
 - d. *The TRH will be required to pay lease rental charges to state authority (SDMA/UTDB)*

B. Regarding FRP Huts/HYBRID Huts proposed other than within the premises of TRH it is proposed to lease out the developed asset business and day operation and maintenance to local people/local stakeholders committee. A MOU in this regard is proposed between the state authority (SDMA/UTDB) & local people/local stakeholders committee with following provisions:

- a. The day to day operation and maintenance of the FRP Huts/HYBRID Huts shall be the responsibility of respective local people/local stakeholders committee.*
- b. During normal of time the FRP Huts/HYBRID Huts can be utilized by the local people/local stakeholders committee for the benefit of Tourism.*
- c. During natural calamity/emergence time the district administration will have the sole right for use of FRP Huts/HYBRID Huts and local people/local stakeholders committee will abide by the instructions of the SOMA & District Administration regarding the use of FRP Huts/ HYBRID Huts.*
- d. The local people/local stakeholders committee will be required to pay lease rental charges to state authority (SDMA/UTDB)."*

7. Due to the importance and time-bound planning of A.B.D., according to the Direction of Program Director, UEAP Dehradun, the Corporation was transferred by the corporation itself. Thereafter in the year 2020 Panchachuli Base Camp, Village Dugtu, the aforesaid constructed F.R.P. were rented for 7 years to Shree Ganesh Singh Resident of Umchia, P.O. Tejam, Dharchula through tender for operating the said FRP conducted on the basis of annual rent since 01.01.2021 to the date of expiry of which is 31.12.2026. Thus, it is clear from the above facts that the above constructed scheme under ADB assisted UEAP in which the property is owned by the Department of Tourism, Due to which, in order to instructions given by NGT, the constituted Point No. 2 of the recommendations presented by the committee, in which the said FRP huts were given by the committee to the tourism department. It has been recommended to transfer the name to the registered land, on examination it has been found that the land which has been registered in the name of

tourism department his some part have been cut during the road construction, mostly part is suppressed by debris and the remaining land due to sloping is not in use. It is also known that the land on which the F.R.P. Hut is pre built and the land which is transferred to the Tourism Department, both land comes under proprietorship of State Government under category 9(3)D, barren land kabil aabad and is of the same account and in the control and managed by Revenue Department. In the difference of Khasra Number of the sole land in view of District Administration Pithoragarh and District Tourism Development Officer, Pithoragarh through which the land on which F.R.P. Hut is constructed, that also transferred to the Tourism Department.

8. At present, the question is of Tourism/Uttarakhand Tourism Development Council, the corporation is only for its supervision and operation getting it done through a private person. In this regard, it is also important that the arrangements for the operation of the above project have been made by U.T.D.B./S.D.M.A. It was to be done through private organizations or individuals and under the disaster, the above property was to be used for disaster-free works on the retirement of the Disaster Authority/District Magistrate. The basic purpose of building the above property was disaster survival.

9. The contentions of the learned Counsel appearing for the respondents are that the above huts were made only for disaster management and disaster survival and for the strategic purposes for which no details are required to be disclosed being border area.

10. Accordingly, we direct that the actions under the disaster management or the actions in the light of strategic points may be taken by use of those huts but the commercial activities will not be permitted by the authorities concerned. In case of use of forest land, the permission from the Forest

Authorities according to the Forest Act must be taken in accordance with the rules. For any action under the Disaster Management Act or strategic point of view, the authorities must take into account that the actions shall not adversely affect or violate the environmental rules.

11. With the above observations and directions, the application stands disposed of.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

August 08, 2023
Original Application No. 578/2022
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