Item No. 11 Court No. 2

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 709/2023
(IA No. 272/2024)

Lal Ji Kumar Applicant

Versus

Divisional Forest Officer-Nainital & Ors. Respondent

Date of hearing: 19.07.2024

CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Applicant: None
Mr. Manoj Singh Negi, Applicant in I.A. No. 272 of 2024 (through VC)

Respondents: Mr. Rudra Paliwal, Proxy Counsel for Mr. Neeraj Counsel for State of Uttarakhand (through VC)
Dr. Anand Srivastava, Additional Secretary, Revenue (through VC)
Mr. Balendu Shekhar and Ms. Tanisha Samanta, Advocates with Mr. Arvind Kumar,
Suprintending Officer, Survey of India (Through VC)

ORDER

IA No. 272/2024

1. This is an application seeking impleadment as one of the respondent, filed by Manoj Singh Negi s/o Matwar Singh Negi claiming to be villager of Khasra No. 424 of Village Gethiya and it is said that he is interested person in the land in dispute. We find him to be a necessary party in the matter. Hence the application is allowed.

2. Let Manoj Singh Negi be impleaded as respondent no. 7. The Registry shall prepare amended memo of parties accordingly.

Main Matter

3. Original Application has been filed by Lal Ji Kumar, applicant stating that Gethiya, a small revenue village having area approximately 5 to 7 hectares, is located on a hill top in Nainital, Uttarakhand and is surrounded on all its side by the reserved forest. Some unknown persons have dismantled the boundary pillars demarking the boundary lines between the forest land and revenue land and have made encroachments over the forest land including Khasra numbers 421, 423 and 424. Complaints were made to the concerned authorities but no action has been taken on the same.

4. Tribunal issued notices to respondents requiring them to file their responses. A joint Committee was also constituted comprising representatives of Uttarakahnd Pollution Control Board (hereinafter referred to as '**UKPCB**'), Divisional Forest Officer (hereinafter referred to as '**DFO**') and District Magistrate, Nainital. Committee was required to verify the facts and submit report.

5. Pursuant to above order dated 28.11.2023 passed by Tribunal, joint Committee submitted its joint inspection report dated 13.02.2024 stating as under:-

> *"2- राजस्व अभिलेखों के अनुसार ग्राम गोठिया पट्टी भवाली के खसरा नम्बर 397, 421, 423, 424 की खतौनी के अवलोकन से खसरा नम्बर 397 रकबा 0.307 है., 421 रकबा 0.135 है., 423 रकबा 0.129 है. कुल 03 खसरा नम्बरों का रकबा 0.571 हेक्टेयर वर्तमान समय में नॉन ज्येड□ए□ खतौनी खाता संख्या 70 में सरकार उत्तराखण्ड श्रेणी 09 (3)ड़ वंजर के रूप में दर्ज अभिलेख है जो मौके पर बंजर स्थिति में ही है जो कि वास्तविक स्वरूप ने है। जिन पर किसी प्रकार का कोई अतिक्रमण होना नही पाया गया। संयुक्त सर्वेक्षण के दौरान वन विभाग के द्वारा भी खसरा नम्वरों 397, 421. 423 को अपने क्षेत्र से बाहर होना बताया गया है। परन्तु खसरा संख्या 424 में वन विभाग के द्वारा अपनी सीमा के अन्तर्गत होना बताया गया जबकि राजस्व विभाग के अनुसार खसरा नम्बर 424 रकबा 1.097 हेक्टेयर श्रेणी 01 (क) संक्रमणीय अधिकार वाले भूमिधरों के अधिकार में हंसा दत्ता आदि खातेदारों के नाम पर दर्ज है। हाल बन्दोबस्ती नक्शे के अनुसार खसरा नम्बर 424*

की सीमा वन विभाग की सीमा से मिलान करती है जिसमे वन विभाग के पिलर संख्या 08 व 09 खसरा नम्बर 424 के बाहर स्थित है।

2- वन विभाग द्वारा अवगत कराया गया है कि वन विभाग के नक्शे के अनुसार खसरा नम्बर 424 मनोरा रेंज अन्तर्गत कुरिया कम्पार्ट संख्या 05 के अन्तर्गत आ रहा है। इसके अतिरिक्त उप प्रभागीय वनाधिकारी नैनीताल वन प्रभाग नैनीताल द्वारा अपने कार्यालय पत्र संख्या 197/13-1 दिनांक 15.01.2024 से अवगत कराया है कि पूर्व में भी इस भूमि के संबंध में विवाद उत्पन्न हुआ था, जिसमें प्रभागीय वनाधिकारी नैनीताल वन प्रभाग नैनीताल के द्वारा अपने पत्र संख्या 2554/27-19 दिनांक 28.01.2021 से सर्वेक्षण का कार्य भारतीय सर्वेक्षण विभाग से कराये जाने हेतु पत्र प्रेषित किया गया था। पत्र की छायाप्रति संलग्न है। (संनमक- क)

3- वन विभाग के द्वारा खसरा संख्या 424 में सीमा विवाद के संबंध में सर्वे हेतु दिनांक 24.01.2024 की तिथि नियत की गयी थी। जिसमें सर्वेयर के द्वारा भी अवगत कराया गया कि राजस्व विभाग की खतौनी में दर्ज खसरा संख्या 424 वास्तविक रूप से आरक्षित वन क्षेत्र की सीमा के अन्तर्गत है जो कि वन विभाग के कुरिया ब्लॉक कक्ष संख्या 05 के नाम से गजट नोटिफिकेशन वर्ष 1933 में दर्ज है। सर्वेक्षण रिपोर्ट की छायाप्रति संलग्न है। (संलग्नक- कं(1))

4- राजस्व विभाग के अनुसार खसरा नम्बर 424 की पैमाईश करने पर हाल बन्दोवस्ती नक्शे के अनुसार खसरा नम्बर 424 की सीमा सही होनी पायी गयी जिसका खातेदार राजेन्द्र नाथ साह द्वारा 0.262 हेक्टेयर भूमि विक्रय पत्र के द्वारा मनोज सिंह नेगी पुत्र एम० एस० नेगी को विक्रय की गयी है जिसका दा० खा० खतौनी में अगलदरामद है। खसरा नम्बर 424 मौके पर पंजर है जिस पर किसी प्रकार का कोई अतिक्रमण नहीं है। खतौनी नकल संलग्न है। (सेलानक- ख)

5- हाल बन्दोवस्ती खसरा नम्बर 424 की सीमा वन विभाग की सीमा से मिलती है जिसके सम्बन्ध में हाल बन्दोबस्ती राजस्य नक्शे के अनुसार गौके पर सीमांकन करने से खसरा नम्वर 424 के खातेदारों द्वारा यन विभाग की सीमा पर कोई अतिक्रमण होना नहीं पाया गया। हाल बन्दोबस्त नक्शे की प्रति संलग्न है। (सलानक- ग

6- वन विभाग के द्वारा त्तंयुक्त सर्वेक्षण के दौरान अवगत कराया है कि उक्त खसरा नम्बर 424 की भूमि यन विभाग के सीमा के अन्तर्गत आ रही है तथा यह क्षेत्र आरक्षित वन क्षेत्र में आता है। अतः वस्तुस्थिति को स्पष्ट करने हेतु साविक व हाल बन्दोबस्त के रिकार्ड को जिला कार्यालय के माल अभिलेखागार से तलव किया गया तथा तहसीलदार नैनीताल को इस संबंध में आख्या प्रस्तुत किये जाने हेतु अवगत कराया गया है।

7- तहसीलदार नैनीताल द्वारा अपने कार्यालय पत्र संख्या 318/र.का./2024 दिनांक 01 फरवरी 2024 के द्वारा आख्या प्रेषित की गयी, जिसके मुख्य विन्दु निम्नवत् है-

- साबिक बन्दोवस्त के मौजा बेलुवाखान (हाल ग्राम गेठिया) चक केमुआतल्ला पट्टी छः खाता परगना छः खाता जिला नैनीताल के हाल खसरा नम्बर 424 को साफ खसरा से मिलान करने पर साविक खसरा नम्बर 816 जिसका रकया 54 नाली 11 मुट्ठी पाया गया। परन्तु यह साविक खसरा नम्वर साविक नक्शे में 172/916 के तौर पर अंकित होना पाया गया। यह साबिक नक्शा वर्ष 1899-97 के बन्दोबस्त के दौरान तैयार किया गया था।

- *उपरोक्त नवशे में वन विभाग की पिलर संख्या 02 एवं 01 राजस्व नक्शे के अन्दर है तथा पिलर संख्या 03, 04, 05, 07, 08 राजस्य नक्शे की सीगा से लगे हुए है। सायिक बन्दोबस्त के नक्शे की सत्यापित प्रति संलग्न है। (सेलानक- ब)*

- *उपरोक्त साविक नक्शे के आधार पर ही वर्तमान बन्दोवस्ती नक्शे को तैयार किया गया है। जो कि वर्ष 1955-56 मे तैयार किया गया है। इस आधार पर वन विभाग के पिलर संख्या 02. 03 को वर्तमान हाल बन्दोवस्ती नक्शे से हटा दिया गया है। यहाँ यह भी द्दष्टिगोचर हो रहा है कि वर्ष 1899-97 के बन्दोवस्त में से ही उक्त दोनों पिलर नवशे में राजस्व विभाग के खसरा संख्या 172/916 के अन्दर आच्छादित थे।*

- *तहसीलदार नैनीताल के द्वारा अपनी आख्या में निष्कर्ष के तौर पर स्पष्ट किया है कि वर्ष 1899-97 के बन्दोवस्त के दौरान से ही हाल खसरा संख्या 424 (साविक खसरा नम्बर 172/916) का रकया 1.097 है. ही है तथा वन विभाग का आंशिक क्षेत्र पूर्व से ही राजस्य नवशे में आच्छादित बला आ रहा था जिसे हाल गन्दोबस्त 1955-56 के दौरान नक्शे से हटा दिया गया है। हाल गन्दोवस्त नक्शे में कोई भी पिलर राजस्व विभाग के नक्शे की सीमा के अन्तर्गत प्रदर्शित नहीं है। (सेलग्नक- च)*

उक्त तथ्यों से स्पष्ट है कि राजस्व विभाग एवं वन विभाग के मध्य राजस्व विभाग के ग्राम गेठिया के खाता खतौनी संख्या 144 के खसरा संख्या 424 एवं यन विभाग के कुरिया ब्लॉक के कम्पार्ट संख्या 05 में नक्शे को लेकर विवाद की स्थिति द्दष्टिगोचर हो रही है।

उक्त के संबंध में उत्तराखण्ड शासन के राजस्य अनुभाग-2 के पत्र दिनांक 09.10.2023 के द्वारा वन एवं राजत्त्व विभाग के मध्य भूमि के रिकार्ड एवं नियमों आदि में मत भिन्नता के संबंध में दिनांक 11. 09.2023 को आहूत बैठक में इस प्रकार के प्रकरणों में जिलाधिकारी की अध्यक्षता में एक समिति गठित कर निस्तारण किये जाने के निर्देश दिये गये है। इस समिति में संबंधित प्रभागीय वनाधिकारी एवं वन वन्दोवस्त अधिकारी सदस्य के तौर पर सम्मिलित है। अतः विषयगत प्रकरण को संबंधित स्थायी समिति को संदर्भित किया जाना उचित प्रतीत होता है।"

English Translation by Tribunal

"2- According to the revenue records, on the observation of Khatauni of Khasra No. 397, 421, 423, 424 of Village Gethiya Patti Bhawali, Khasra No. 397 has an area of 0.307, 421 has an area of 0.135, 423 has an area of 0.129. The total area of 03 Khasra numbers is 0.571 hectares. At present, the records are recorded as Government of Uttarakhand Category 09 (3) D Barren in Non-ZA Khatauni Account No. 70, which is in barren condition on the spot and in its actual form. No encroachment of any kind was found on them. During the joint survey, the Forest Department also stated that Khasra numbers 397, 421, 423 are outside its area. But the Forest Department has declared Khasra No. 424 to be within its boundary, whereas according to the Revenue Department, Khasra No. 424, an area of 1.097 hectares, is registered in the name of account holders Hansa Dutta etc. under the rights of landholders with category 01 (a) transferable rights. As per the recent settlement map, the boundary of Khasra No. 424

matches with the boundary of the Forest Department, in which pillar numbers 08 and 09 of the Forest Department are located outside Khasra No. 424.

2- The Forest Department has informed that according to the map of the Department, Khasra number 424 is coming under Kuria Compartment no. 05 under Manora Range. Apart from this, the Deputy Divisional Forest Officer, Nainital Forest Division, Nainital has informed through his letter no. 197/13-1 dated 15.01.2024 that earlier also a dispute had arisen regarding this land, in which the Divisional Forest Officer, Nainital Forest Division, Nainital had sent a letter through his letter no. 2554/27-19 dated 28.01.2021 to get the survey work done by the Indian Survey Department. A copy of the letter is attached. (Annexure-A)

3- The date of 24.01.2024 was fixed by the Forest Department for the survey regarding the range dispute in Khasra no. 424. The surveyor also informed that Khasra no. 424 recorded in the Khatauni of the Revenue Department is actually within the boundary of the reserved forest area which is recorded in the gazette notification of the year 1933 in the name of Kuria Block Room No. 05 of the Forest Department. A copy of the survey report is attached. (Annexure-A (1))

4- According to the Revenue Department, on measuring Khasra No. 424, the boundary of Khasra No. 424 was found to be correct as per the recent settlement map. Its account holder Rajendra Nath Sah has sold 0.262 hectare of land through a sale deed to Manoj Singh Negi s/o MS Negi, whose claim is recorded in the Khatauni. Khasra No. 424 is a panjar on the spot, on which there is no encroachment of any kind. Khatauni copy is enclosed. (Annexure-B)

5- The boundary of the current settlement Khasra no. 424 meets the boundary of the Forest Department. In relation to this, after demarcation on the Gauka as per the current settlement revenue map, no encroachment was found on the boundary of the Forest Department by the account holders of Khasra no. 424. A copy of the current settlement map is enclosed. (Annexure-)

6- During the joint survey conducted by the Forest Department, it has been informed that the land of Khasra No. 424 falls under the boundary of the Forest Department and this area falls in the reserved forest area. Therefore, the records of the public and recent settlement were called from the goods archives of the district office to clarify the actual situation and the Tehsildar of Nainital has been informed to submit a report in this regard.

7- The Tehsildar of Nainital sent a report through his letter no. 318/R.Ka./2024 dated 01 February 2024, the main points of which are as follows-

• On matching the current Khasra number 424 of Mauja Beluwakhan (present village Gethiya) Chak Kemuatalla Patti Chhah Khata Pargana Chhah Khata District Nainital of the previous settlement with the clean Khasra, the Savik Khasra number 816 whose area was 54 Nali 11 Muthi was found. But

this Savik Khasra number was found to be marked as 172/916 in the savik map. This savik map was prepared during the settlement of the year 1899-97.

• In the above mentioned map, pillar number 02 and 01 of the forest department are within the revenue map and pillar number 03, 04, 05, 07, 08 are attached to the boundary of the revenue map. The verified copy of the Salivi settlement map is enclosed. (Annexure-B)

• The present settlement map has been prepared on the basis of the above mentioned savik map which was prepared in the year 1955-56. On this basis, pillar number 02 and 03 of the forest department have been removed from the present settlement map. It is also visible here that in the settlement of the year 1899-97 itself, the above mentioned two pillars were covered within the revenue department's Khasra number 172/916 in the map.

• In his report, Tehsildar of Nainital has clarified in conclusion that the area of the current Khasra no. 424 (Savik Khasra number 172/916) is 1.097 only since the settlement of 1899-97 and a part of the forest department was already covered in the revenue area which was removed from the map during the recent settlement of 1955-56. In the recent settlement map, no pillar is shown within the boundary of the Revenue Department map. (Annexure-E)

It is clear from the above facts that a situation of dispute is visible between the Revenue Department and the Forest Department regarding the map in Khasra no. 424 of Khata Khatauni no. 144 of Village Gethiya of Revenue Department and Compart no. 05 of Kuria Block of Forest Department.

In relation to the above, in the letter dated 09.10.2023 of Revenue Section-2 of Uttarakhand Government, regarding the difference of opinion in the records and rules etc. of land between the Forest and Revenue Department, in the meeting convened on 11.09.2023, instructions have been given to constitute a committee under the chairmanship of the District Magistrate to settle such cases. The concerned Divisional Forest Officer and Forest Settlement Officer are included as members in this committee. Therefore, it seems appropriate to refer the subject matter to the concerned Standing Committee."

6. Since, Tribunal found that there was difference of opinion/inter-se dispute between Revenue and Forest Department of State of Uttarakhand, it was expedient to implead State of Uttarakhand through Chief Secretary, Government of Uttarakhand as respondent no. 4; Principal Secretary, Revenue, Uttarakhand as respondent no. 5 and Surveyor General of India

as respondent no. 6. Notices were issued to newly impleaded respondent no. 4 to 6, giving them opportunity to file response.

7. The matter was again considered by Tribunal on 08.04.2024 and it observed in para 8, as under:-

> *"8. In view of the nature and magnitude of the environmental issues regarding destruction/user for non-forest purposes of forest land by encroachments in the garb of disputes regarding ownership/possession/demarcation in the entire State of Uttarakhand, we consider it appropriate to expand the scope of present proceedings in exercise of powers to take suo motu cognizance for protection of forest land by just and proper adjudication of the environmental questions involved. Accordingly, the Principal Secretary, Revenue Department, Government of Uttarakhand, Principal Chief Conservator of Forest (HoFF), Government of Uttarakhand and Surveyor General of India are directed to file their respective replies/responses by way of affidavits* ***giving details of land which is claimed by the Forest Department/Survey of India to be forest land regarding which entries in favour of private land holders have been made by the Revenue Department and disputes regarding ownership/possession/demarcation are pending****."*

8. Tribunal required response/replies to be filed by Principal Secretary, Revenue and Principal Chief Conservator of Forest, State of Uttarakhand as well as Surveyor General of India within two months. Tribunal also required authorized officers of Principal Secretary, Revenue and Principal Chief Conservator of Forest and Surveyor General of India to remain present through VC on the next date.

9. Today, pursuant to above order, Dr. Anand Srivastava, Additional Secretary, Revenue (through VC) and Mr. Arvind Kumar, Suprintending Officer, Survey of India (Through VC) are present.

10. Dr. Anand Shrivastava, Additional Secretary, Revenue stated that the exercise of demarcation has commenced but it will take long time. A reply dated 18.07.2024 has been filed by respondent no. 1, DFO, Nainital, Forest Division giving brief history of entire dispute and we find it appropriate to reproduce the same as under:-

"5- That in compliance of order dated 28-11-2023 passed by this Hon'ble Tribunal in instant Original Application the Sub-District Magistrate, Nainital (Representative of District Magistrate, Nainital), Sub-Divisional Forest Officer, Nainital (Representative of Divisional Forest Officer, Nainital) and Regional Officer, Uttarakhand Pollution Control Board, Nainital were present for Inspection of said land on 06-01-2024 with concerned Sub-Ordinate Officers. The petitioner Lalji Kumar was not present on the said Inspection while he was informed by Nodal Agency (Uttarakhand Pollution Control Board) UKPCB. It was found that there is a difference between the Revenue Records and Records of Forest Department regarding said land. The Joint Inspection Committee further suggested that as per the Govt. order dated 0910-2023, the matter should be referred to standing committee constituted under the Chairmanship of District Magistrate, Nainital. The Compliance report was submitted vide letter no. UKPCB/ROH/Writ/24/2740-1207 dated 03-02-2024 by Regional Officer, Uttarakhand Pollution Control Board, Haldwani, Nainital before this Hon'ble Tribunal.

6- That the instant Original Application was listed before this Hon'ble Court on 15-02-2024 and the Hon'ble Tribunal was pleased to take the compliance report dated 03-02-2024 on record. The Hon'ble Tribunal also directed to implead State of Uttarakhand through Chief Secretary, Govt. of Uttarakhand, Principal Secretary, Revenue Department, Uttarakhand and Surveyor General of India as respondent no. 04 to 06 in instant matter. The Hon'ble Tribunal directed respondent no. 04 to 06 to file their responses in the matter. The operative part of order date 15-02-2024 is being quoted as under-

> *3. In view of the facts and circumstances of the case we consider it appropriate to have response of (1) State of Uttarakhand through Chief Secretary, Government of Uttarakhand, (2) Principal Secretary, Revenue Department, Uttarakhand, (3) Surveyor General of India, who stand impleaded as respondents No. 4 to 6.*
>
> *4. The Registry is directed to amend memo of parties and issue notices to respondents No. 4 to 6 requiring them to file their reply/response along with copies of all relevant revenue documents including revenue record, maps etc. pertaining to the land in question within one month at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.*
>
> *5. List for further consideration on 08.04.2024.*

7- That the instant Original Application was listed on 08-04-2024 before this Hon'ble Tribunal and the Tribunal was pleased and direct Principal Secretary, Revenue Department, Government of Uttarakhand, Principal Chief Conservator of Forest (HoFF), Government of Uttarakhand

and Surveyor General of India to file their responses/respective replies by way of the affidavits. The Hon'ble Tribunal further directed that the officers duly authorised by the Principal Secretary, Revenue Department, Government of Uttarakhand, the Principal Chief Conservator of Forest (HoFF), Government of Uttarakhand and the Surveyor General of India through VC before this Tribunal on the next date of hearing to be essential for assisting this Tribunal in just and proper adjudication of the questions involved in the case. The operative part order dated 08-04-2024 is being quoted as under-

> *11. In view of the facts and circumstances of the case we also consider presence of officers duly authorised by the Principal Secretary, Revenue Department, Government of Uttarakhand; the Principal Chief Conservator of Forest (HoFF), Government of Uttarakhand and the Surveyor General of India through VC before this Tribunal on the next date of hearing to be essential for assisting this Tribunal in just and proper adjudication of the questions involved in the case. Accordingly they are directed to remain present before this Tribunal on that date with the relevant record.*
>
> *12. A copy of this order be also sent to the Principal Secretary, Revenue Department, Government of Uttarakhand, the Principal Chief Conservator of Forest (HoFF), Government of Uttarakhand and the Surveyor General of India by email for requisite compliance.*

8- That That the British Government Notified Indian Forest Act 1927 (Act No. 16 of 1927) to consolidate the law relating to forests, transit of forest-produce and the duty leviable and other forest-produce.

9- That the Indian Forest Act 1927 deals with the deferent kind of Forest namely Reserved Forest (Chapter-II, Sec. 3 to 27), Village Forest (Chapter-III Sec 28), Protected Forest (Chapter-IV Sec 29 to 34) & Of the Control over Forests and lands not being the property of Government (Chapter-V Sec 35 to 38).

10- That Chapter-II, Section-3 of Indian Forest Act 1927 empowers the State Government to constitute any Forest land or Waste land which is the property of Government a Reserved Forest in prescribed manner. Section-3 of Indian Forest Act 1927 is being quoted as under-

> *3. Power to reserve forests.—The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of*

which the Government is entitled, a reserved forest in the manner hereinafter provided.

11. *That the Chapter-II, Section-4 of Indian Forest Act-1927 empowers the State Government to issued notification in official gazette declaring that any land has been decided to constitute as a Reserved Forest. The Section-4(b) of Indian Forest Act-1927 empowers the State Government to specify as nearly as possible the situation of the land. Section-4(c) of Indian Forest Act-1927 empowers the State Govt. to appoint an officer (The Forest Settlement Officer) to inquire into and determine the existence, nature and extent of any rights alleged to exit in favour of any person in or over any land.*

12- *That Chapter-II, Section- 5 of Indian Forest Act-1927 put a bar of accrual of Forest rights after the issue of notification under Section-4. After the notification of Section-4, no person/agency can claim any right over the land comprised in the notification except by succession or under a grant or contract in writing made or entered into by or on behalf of Govt. The Section- 5 of Indian Forest Act-1927 is being quoted as under-*

> *5. Bar of accrual of forest-rights.—After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.*

13- *That the State of Uttar Pradesh made an amendment in Section-5 of Indian Forest Act- 1 927 by Uttar Pradesh Act No.-23 of 1965 with effect of 23.11.1965. The amendment made by Uttar Pradesh Govt. is being quoted as under-*

> *[Uttar Pradesh] .- In its application to the State of Uttar Pradesh, for Section 5, substitute the following section; namely: 5. Bar of accrual of forest rights. - After the issue of notification under section 4 no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or a contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, nor any tree therein felled, girdled, lopped, tapped, or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest-produce removed therefrom,*

except in accordance with such rules as may be made by the State Government in this behalf U.P. Act 23 of 1965, Section 3 (w.e.f 23-11-1965).

14- *That Chapter-II, Section-20 of Indian Forest Act-1927 empowers the State Govt. to issue notification declaring Reserved Forest. The Section-20 of Indian Forest Act-1927 is being quoted as under-*

20. Notification declaring forest reserved.—

(1) When the following events have occurred, namely:—

(a) the period fixed under section 6 for preferring claims have elapsed and all claims (if any) made under that section or section 9 have been disposed of by the Forest Settlement-officer;

(b) if any such claims have been made, the period limited by section 17. for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and

(c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under section 16 of that Act,

The State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

15- *That the State of Uttar Pradesh made amendment in Indian Forest Act-1927 by the way of Indian Forest (Uttar Pradesh Amendment) Act-1965 and inserted a new Section-20 A in the Act. The Section-20 A of Indian Forest (Uttar Pradesh Amendment) Act-1965 is being quoted as under-*

[Uttar Pradesh]- In its application to the State of Uttar Pradesh, after Section 20, insert the following new section, namely:

20-A. Certain forest-land or waste-land when deemed to be reserved forest.

(1) Notwithstanding anything contained in this Act or in any other law .for the time being in force, including the Merged States (Laws) Act, 1949 or the Uttar Pradesh Merged States (Application of Laws) Act, 1950, or any order issued thereunder, any forest-land or waste-land

in a merged State which immediately before the date of merger (hereinafter in this section referred to as the said date),

(a) was deemed to be a reserved forest under any enactment in force in that State, or

(b) was recognised or declared by the Ruler of such State as a reserved forest under any law (including any enactment, rule, regulation, order, notification, custom or usage having the force of law) for the time being in force, or

(c) was dealt with a reserved forest in any administrative report or in accordance with any working plan or register maintained and acted upon under the authority of the Ruler, shall be deemed to be and since the said date to have continued to be a reserved forest subject to the same rights or concession, if any, in favour of any person as were in force immediately before the said date.

Explanation I.A certificate of the State Government or of any officer authorized in this behalf to the effect that a report, working plan or register was maintained and acted upon under the authority of the Ruler shall be conclusive evidence of the fuel that it was so maintained and acted upon.

Explanation II. Any question as to the existence or extent of any right or concession referred to in this sub-section shall be determined by the State Government, whose decision, given oiler such enquiry, if any, as it thinks fit, shall be final.

Explanation III. Working plan includes any, plan scheme, project, map, drawings, and lay-outs prepared for the purpose of carrying out the operations in course of the working and management of forests.

(2) No right shall be deemed to have been acquired on or after the said date in or over any land mentioned in subsection (1) except by succession or under a grant or contract in writing made or entered into by or on behalf of the State Government or some person in whom such right was vested immediately. before the said date and no fresh clearings since made for cultivation or for any other purpose (except clearings made in accordance with any concessions granted by the Ruler and in force immediately before the said date or in accordance with the rules made by the State Government in this behalf since the said date) shall be recognised as or deemed to be lawful, anything contained in this Act or any other law for the time being in force notwithstanding.

(3) The State Government may within five years from the commencement of the Indian Forest (Uttar Pradesh Amendment) Act, 1965, revise any arrangement of the nature specified in section 22, and pass any incidental that any of the proceedings specified in the foregoing provisions of this Chapter be taken.

(4) In relation to any land mentioned in sub-section (1), the reference in sections 24 and 26

(a) to section 23 shall be construed as references to sub-section (2); and

(b) to rights admitted, recorded or continued under section 14 or section 15 shall be construed as references to rights of pasture or to forest-produce admitted, recorded or continued in or under the corresponding enactment, law or document referred to in sub-section (1).

16- That Section-22 of Indian Forest pct-1927 empowers the State Govt. to revised arrangement made under Section-15 or Section-18 of said Act. The Section-22 of Indian Forest Act-1927 is being_ quoted as under-

22. Power to-revise arrangement made under section 15 or section 18—

The State Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18 and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

17- That State of Uttar Pradesh made an amendment in Indian Forest Act-1927 and amended the Section-22 of Central Act by Indian Forest (Uttar Pradesh Amendment) Act-1965. The Section-22 of Indian Forest (Uttar Pradesh Amendment) Act-1965 is being quoted as under-

22. Power to revise arrangement made under section 15 or section 18.—The 1 [State Government] may, within five years from the publication of any notification under section 20 revise any arrangement made under section 15 or on appeal under section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings, specified in section 15 .be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

18- That the State of Uttar Pradesh inserted a new Section namelySection-22 A in Indian Forest Act-1927 by the way of

Indian Forest (Uttar Pradesh Amendment) Act-1965. The Section-22 A of Indian Forest (Uttar Pradesh Amendment) Act-1965 is being quoted as under-

> *22-A. Power of revision in other cases.*
>
> *(1) Without prejudice to the provisions of section 22, the State Government may, either of its own motion or on a petition being made in that behalf, call for the record of any appeal decided under section 18, and may confirm the order passed on such appeal, or set it aside, or modify it, or remand the case to the Forest Settlement Officer with such directions as it may think fit.*
>
> *(2) No petition under this section may be made, after November 22, 1965 and the State Government may not exercise any power under this section after the said date. U.P. Act 11 of 1973, Section 2 (w.r.e.f. 23-11-1960).*

19- *That the Section-23 of Indian Forest Act- 1927 provides that No right acquired over reserved forest. The Section-23 of Indian Forest Act-1927 is being quoted as under-*

> *23. No right acquired over reserved forest, except as here provided.—No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the [Government] or some person in whom such right was vested when the notification under section 20 was issued.*

20- *That in compliance of order dated 28-11-2023, the Tehsildar Nainital vide letter no. 318/Ra.Ka./2024 dated 01-02-2024 send a detail report to Sub-Divisional Magistrate, Nainital regarding the land in question of instant Original Application. The Tehsildar, Nainital in his report admitted that as per the settlement carried out in year 1899-77. The Khasra No. 424 (Sabik Khasra No. 172/916) having area of 1.097 Hec. is Partly overlapping on Forest area which was removed in the Revenue map prepared in 1955-56. It is clear evidence that the said land is a part of Reserve Forest Kuriya Block of Manora Range, Nainital Forest Division, Nainital.*

21- *That if a Government or Waste Land declare a Reserved Forest as per Section-20 of Indian Forest Act-1927 than the said land remains as Reserve till the State Govt. issue a notification under Section-27 of Indian Forest Act-1927 regarding to declare Forest no longer reserve. The Section-27 of Indian Forest Act-1927 is being quoted as under-*

> *27. Power to declare forest no longer reserved—*
>
> *(1) The State Government may by notification in the Official Gazette, direct that, from a date fixed by such*

notification, any forest or any portion thereof reserved under the Act shall cease to be a reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

22- *That the State Govt. of Uttar Pradesh or Uttarakhand never issued any notification under Section-27 of Indian Forest Act-1927 regarding the Reserve Forest of Kuriya Block of Manora Range, Nainital Forest Division, Nainital.*

23- *That the Forest Range Officer, Manora Forest Range, Nainital Forest Division, Nainital vide letter no. 349/13-1 dated 12-012024 also send a report to Sub-Divisional Forest Officer, Nainital Forest Division, Nainital regarding the land of Kuriya Compartment No. 05 of Manora Range. The Forest Range Officer, Manora Forest Range, Nainital Forest Division, Nainital informed that he has made an inspection dated 12-01-2024 with Surveyor and Sub-Ordinated Staff of Manora Range, Nainital Forest Division, Nainital and found that the as per the record and maps of forest department the land belongs to Forest Department and in Revenue Records the same land has been shown as Revenue land. The Range Officer, Manora also requested that the survey of said land should be conducted through Survey of India Department.*

24- *That as per the instruction/orders given by office of deponent vide letter no. 3767/13-1 dated 23-01-2024 a team of 03 Surveyors namely Mr. Ajay Kumar, Surveyor, Almora Forest Division, Almora, Mrs. Neelam Kohli, Surveyor, Nainital Forest Division, Nainital and Mrs, Sunita, Surveyor, Tarai East Forest Division, Haldwani inspected the said land. As per their report the Revenue Maps are showing the land between Boundary Pillar No. 07 and 08 of Kuriya Block as Revenue land. The team of surveyor further reported that as per Khasra No. 424 of Village Gethiya, Patti Bhowali, District Nainital in Revenue records the total lands is a revenue land but that revenue land is overriding the land located in Reserve Forest, Kuria Block, Compartment No. 5 of Manora Range. Hence there is dispute between the boundaries of Reserve Forest and Revenue land in instant matter.*

25- *That the Joint Inspection Report dated 06-01-2024 prepared in compliance of order dated 28-11-2023 passed by this Hon'ble Tribunal also indicates that there is a dispute in Khtauni No. 144, Khasra No. 424 of Village Gethiya, Patti Bhowali, District Nainital and the Reserve Forest of Kuria Block, Compartment No. 5.*

26- *That the Divisional Forest Officer, Nainital Forest Division, Nainital vide letter no. 2554/27-19 dated 28-01-2021 also informed Conservator of Forest, South Kumaun Circle,* *Uttarakhand Nainital regarding the dispute and further requested to conduct a survey of said land through Survey of India Department, Govt. of India.*

27- *That the Hon'ble Apex Court in the matter of Prahlad Pradhan and Ors. Vs. Sonu Kumhar and Ors. negated argument of ownership based upon entries in the revenue records. It was held that the revenue record does not confer title to the property nor do they have any presumptive value on the title. The Court held as under:*

> *"5. The contention raised by the appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the· title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property."*

28- *That the Principal Chief Conservator of Forest (HoFF), Uttarakhand Dehradun vide letter dated 13-05-2024 directed to survey and demarcation of said land through Survey of India. A true/typed/photocopy of letter dated 13-05-2024 is being annexed as* ***Annexure no. 01*** *of this affidavit.*

29- *That as per direction issued by Principal Chief Conservator of Forest (HoFF), Uttarakhand Dehradun vide letter dated 13-052024 the office of deponent vide letter dated 15-07-2024 referred the matter to Surveyor General of India, Hathibadkla, Salwala, Uttarakhand, Dehradun for survey and demarcation of said land.*

A true/typed/photocopy of letter dated 15-07-2024 is being annexed as ***Annexure no. 02*** *of this affidavit.*

30. *That alter the survey and demarcation of said hind the office of deponent will lake necessary steps to remove any kind of encroachment in said land under the provisions of Section-61 A of Indian Forest (Uttaranchal Amendment) Act-2001."*

11. DFO, Nainital has further stated in para 34 that since there is a dispute between the boundaries of Kuriya Block, as per instruction/orders given by DFO vide letter dated 23.01.2024, a team of three Surveyors namely Ajay Kumar, Surveyor, Almora Forest Division, Almora, Shrimati Neelam Kolhi, Surveyor, Nainital Forest Division, Nainital and Shrimati

Sunita, Surveyor, Tarai East Forest Division, Haldwani were directed to inspect the land and submit the report.

12. They have submitted the report and as per the said report, Revenue Maps are showing land between boundary pillar no. 7 and 8 of Kuriya Block as Revenue Land. The team of surveyor further reported that as per Khasra No. 424 of Village Gethiya, Patti Bhowali, District Nainital, in Revenue records, the total lands is a revenue land but that revenue land is overriding the land located in Reserve Forest, Kuriya Block, Compartment No. 5 of Manora Range. Hence there is dispute between the boundaries of 'Reserve Forest' and 'Revenue land' in instant matter.

13. It is also stated that Principal Chief Conservator of Forest (HoFF), Uttarakhand, Dehradun vide letter dated 13.05.2024 has directed for survey and demarcation of land through Survey of India.

14. It is thus, evident that there is no proper demarcation of land in dispute and since, two Departments i.e. Revenue and Forest of State of Uttarakhand are claiming the land to be in different heading, the exercise of survey and demarcation is necessary.

15. We, accordingly, direct Principal Secretary, Environment and Forest; Principal Secretary, Revenue and Surveyor General of India to undertake the work of demarcation by constituting a team of competent officers and they shall complete the work within two months and submit compliance report by next date by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

16. We also make it clear that in case the said work is not completed and compliance report is not submitted, all three above officers namely

Principal Secretary, Environment and Forest; Principal Secretary, Revenue and Surveyor General of India shall remain present before Tribunal on the next date.

17. List on 23.09.2024.

Sudhir Agarwal, JM

Dr. Afroz Ahmad, EM

July 19, 2024
Original Application No. 709/2023
(IA NO 272/2024)
AB