

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

(Through Physical Hearing with Hybrid V.C. Option)
Original Application No. 471/2022

Kultar Singh ...Applicant

Versus

Forest Department & Revenue Department ...Respondent

Date of hearing: 10.11.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Applicant in person.

Respondent: Mr. Manish Kumar for State of Himachal Pradesh.

Application under provisions of the National Green Tribunal Act., 2010.

ORDER

1. The grievances of the applicant Jaiprakshan Shodh Sansthan with its Head office at Ghezta Niwas (Near Hari Mandir) Jubbal, District Shimla (H.P.) are that illegal encroachments have been made on forest land. Initially eviction proceedings were initiated for removal of such illegal encroachments under orders of Hon'ble High Court of Himachal Pradesh, but subsequently on passing of some further orders drive has been dropped. The applicant is willing to undertake afforestation in such forest land but no land is being made available to the applicant by the Forest Department due to such illegal encroachments. The application has prayed for taking of action for protection of forests and afforestation.

2. Vide order dated 07.07.2022, this Tribunal constituted a Joint Committee comprising of representative of Principal Secretary (Forests), Government of Himachal Pradesh, State PCB, and District Magistrate, Shimla, Himachal Pradesh and directed the same to file Factual and action

taken report within one month.

3. In compliance thereof, Mr. Apoorv Devgan, IAS, Member Secretary, HPSPCB, Shimla sent the report of the Joint Committee vide letter dated 14.09.2022 through email dated 14.09.2022. The relevant part of the report is reproduced as under:-

“Joint Inspection Report of the Committee Constituted in Compliance to Order Passed By Hon'ble National Green Tribunal in OA No.471Of 2022, titled as Kultar Singh V/s Forest Department & Revenue Department on dated 07.07.2022.

Background Note:- Hon'ble National Green Tribunal passed the following orders on 07.07.2022 in the matter of O.A. No. 471of 2022, titled as Kultar Sing Vs. Forest Department and Revenue Department.

"1. The applicant is willing to undertake afforestation in such forest land but no land is being made available o the applicant by the Forest Department.....

2. In view of the averments made in the application, we are of the view that the factual position needs to be verified and remedial action is required to be taken on the basis thereof by the concerned Statutory Authorities. Accordingly, we constitute a Joint Committee comprising of representative of Principal Secretary Forests, Government of Himachal Pradesh, State PCB, and District Magistrate, Shim/a, Himachal Pradesh and direct the same to undertake site visits, look into the grievances of the applicant, verify the factual position and take remedial action in accordance with law by following due process within one month from the date of receipt of a copy of this order. The State PCB will be the Nodal agency for coordination and compliance"

In compliance to the orders passed by Hon'ble National Green Tribunal dated 07.07.2022, Principal Secretary, Forests further authorized Chief Conservator of Forests Shimla, District Magistrate Shimla authorized Sub Divisional Officer (Civil) Jubbal and Member Secretary, HPSPCB Shimla authorized Regional Officer ,Shimla to carryout joint inspection. The committee of authorized officers carried out the joint inspection of Jubbal & Kharapathar area on 30.08.2022 alongwith petitioner Sh.Kultar Singh Ghezta.

- The Chief Conservator of Forest, Shimla apprised the petitioner and other committee members that, Forest department has identified a Govt. land comprising of Khasra No. 188, Charagah Drakhtaan at Patwaar Circle Khara Pather, Tehsil Jubbal, Distt. Shimla (HP) having an*

area of 45-54-29 bighas (3 hectare) which is suitable for plantation. He added that Forest department agrees for collaborating with NGO of the petitioner for carrying out plantation on identified forest land without handing over/transferring possession of the land.

- *He further informed that the matter of illegal encroachment of forest land is already under the consideration of Hon'ble High Court of HP in CWP No.1093 of 2016 & other related petitions. The Forest department is implementing the directions passed by Hon'ble High Court and filing the progress report of the same from time to time. Latest quarterly progress report of Rohm Forest Division in forest Division in encroachment cases for the quarter ending on 30.06.2022 submitted by Divisional Forest Officer, Rohm is annexed as Annexure-1.*
- *Thereafter, the committee visited the spot identified by the Forest Department along with the petitioner at Kharapathar. The petitioner found the identified area suitable for plantation through his NGO. He further requested Forest department to provide such land to his NGO in future also so that he can continue his mission to carry out plantation in Jubbal area.*
- *It is pertinent to mention here that the petitioner, Sh. Kultar Singh Ghezta expressed his satisfaction with the action taken by the Forest department. He apprised that as the Forest department has provided suitable land to his NGO to carry out plantation, his purpose to file petition in the Hon'ble National Green Tribunal has been fulfilled and he is ready to withdraw the case. The statement of petitioner was recorded and is enclosed as Annexure-11."*

4. In our order dated 23.09.2022, we noticed that utilization of Government land comprising of Kharsa No. 188, Charagah Drakhtaan at Patwaar Circle Khara Pather, Tehsil Jubbal, Distt. Shimla (HP) measuring 45-54-29 bighas (3 hectare) for plantation in collaboration with NGO of the petitioner without handing over/transferring possession of the land involved a question of permissibility of diversion of grazing land completely for afforestation without permitting its use for grazing of cattle arises.

5. Vide order dated 23.09.2022, personal appearance of the Deputy Commissioner Shimla before this Tribunal physically or through V.C. was also ordered but he has made request for exemption and in view of the reasons mentioned the request is allowed.

6. The Deputy Commissioner, Shimla has submitted report vide email dated 05.11.2022. The relevant part of the report is reproduced as under:-

“X X X X X X

In compliance to the directions issued by the Hon'ble National Green Tribunal on 23-09-2012 , the Sub Divisional Officer, (Civil) Jubbal, Distt. Shimla, H.P. was directed vide letter No. SML-LB-II (W/70/2022)/2022-2335 30-09-2022 to go through the contents of the orders passed by the Hon'ble National Green Tribunal and send the detailed status report alongwith relevant record to this office within a two weeks time.

In compliance to the directions issued by the undersigned, the Sub Divisional Officer (Civil) Jubbal, Distt. Shimla, H.P. has reported that the most of the Government land situated in District Shimla is Forest land and this forest land has also been classified as "Charagah Darkhan" & Charagah Billa Darkhtan" after Settlement operations amongst other classifications. As far as the question of handing over/ transferring this land to the applicant is concerned, the title of land cannot be transferred in favour of the NGO of the applicant, without approval of the competent authority under Forest Conservation Act, 1980. So far as the question of grazing of cattle is concerned, proposed land is situated at an altitude of about 2800 meters above from sea level and is fit for plantation of specific species of trees. The report of Sub- Divisional Officer (C) Jubbal alongwith detail of government land available in Tehsil Jubbal is also enclosed herewith."

7. We have gone through the report of the Deputy Commissioner, Shimla. We are of the considered view that even the land situated at an altitude of about 2800 meters above sea level is required to be appropriately reserved for grazing by the animals reared in/habiting in the area. Therefore plantation of native trees may be done in layers on the periphery of the said land to leave adequate space for grazing so as both may go together.

8. Since appropriate action for removal of encroachments on forest land is being taken in accordance with the orders of Hon'ble Himachal Pradesh High Court, no further action is required to be taken on the present application.

9. The application is accordingly disposed of with the above directions.

10. A copy of this Order be sent to the applicant and PCCF (HOF) Himachal Pradesh and Deputy Commissioner, Shimla by email for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

November 10, 2022
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