

Item No. 03

**BEFORE THE NATIONAL GREEN TRIBUNAL  
CENTRAL ZONE BENCH, BHOPAL  
(Through Video Conferencing)**

**Original Application No.152/2023(CZ)**

Ram Sharma

Applicant(s)

Vs

Union of India & Ors

Respondent(s)

Date of Hearing: **13.02.2024**

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

For Applicant (s): Mr. Vaibhav Pancholy, Adv.

For Respondent(s): Mr. Sagar Jindal, Adv.  
Mr. Shoeb Hasan Khan, Adv.  
Mr. Vaibhav Thakuria, Adv.  
Mr. M.S. Saharan, Adv.

**ORDER**

1. The grievance of the applicant is that Khasra No. 5621 situated at Village Amer has been recorded as Gair Mumkin Pahad in the name of Forest Department and this land is integral part of Nahargarh Wildlife Sanctuary and Vankhand Amer 54 and said land has been located between Pillar no. 371 of Nahargarh Wildlife Sanctuary. A notice was issued by the Forest Department to the Project Proponent/Respondent and in response to a notice no substantial ground was reported and Forest Department

prepared the comprehensive factual report and found that there are encroachments upon all three places and activities are found to be violative of section 2 of Forest Conservation Act, 1980.

2. The matter was taken up by this Tribunal on 18.10.2023 and a committee of following persons is constituted with direction to submit the factual and action taken report.

- i. One representative from the Additional Chief Secretary, Forest & Wildlife, Govt. of Rajasthan, Rajasthan
- ii. One representative from Collector, Jaipur, Rajasthan.
- iii. One representative from Central Pollution Control Board, Rajasthan
- iv. One representative from Rajasthan State Pollution Control Board.

3. In compliance thereof the members of the Joint Committee visited the site and submitted the report. Notices were also issued to the respondent and the Respondent no.10/Assistant Engineer of the Electricity Department has submitted the reply. It is submitted by the Electricity Department that the father of the Respondent No.12 applied for electricity connection in the year 1978, which was accompanied by the supporting documents and acting in a just and bona fide manner the electric connection was issued according to the prevalent rules. The members of the Joint Committee submitted the report with the following observation :

- (i) Representative of the Forest Department identified and informed the committee members about the

location of the encroachment as mentioned in the Hon'ble NGT order, however, the location of pillar number 371, in respect of which the encroachment was alleged and also mentioned in the order was not traceable.

- (ii) The location, as informed by the Forest Department representative as encroachment, was a house reported to be used for residential purposes and surrounded by so many other houses being used for residential purposes.
- (iii) It has been informed by the representative of the Forest Department that an encroachment case has been registered by the Forest Department under section 34-A of the Wildlife Protection Act 1972 against the alleged encroachment.

#### Conclusion

There are so many structures/houses being used for residential purposes in the area which may be treated as similar to the alleged encroachment.

#### Recommendation

The Forest Department should take appropriate action as per rules on the said encroachment after hearing the case under section 34-A of the Wild Life Protection Act, 1972.

4. We have gone through the report and the map annexed with report, which shows that there are many residential houses, which are *Pakka* in nature and electricity connection was obtained in the year 1978, which shows that they are residing

there before 1978. The Notification dated 8<sup>th</sup> March, 2019 issued by the Ministry of Environment Forest and Climate Change, which provides list of activities prohibited or to be regulated within Eco Sensitive Zone. Clause B deals with the regulated activities and at sl. No. 13 it comes as a regulated activities and there is a provision that local people shall be permitted to undertake construction in their land for their use including the activities mentioned in sub paragraph 1 paragraph 3 as per building by-laws to meet the residential needs of the local residence. The Notification was issued in the year 2019, while the electric connection was taken in the year 1978 and the residential building was there before the issue of notification and in view of the above provision the structure which is standing there is residential building, which is lying there for more than 45 years and comes within the regulated categories.

5. The respondent No.8/State Pollution Control Board has filed the reply with the fact that there are so many structures/houses being used for residential purposes in the area.
6. The photographs at page no. 186 & 187 attached as Annexure-2 shows the residential construction as colony. According to the respondent no. 11

- i. That answering respondent no. 11 has taken birth in the above alleged encroachment site in the year 1964 and his elder siblings also born on the above mentioned address.  
It is pertinent to mention that Kacchi Basti Patta was issued by office of Jaipur Nagar Nigam, Jaipur dated 15.09.2003 in which it was specifically mentioned that this building/house was constructed before 15.08.1998.
- ii. It is further submitted that survey no. 75/19A having measurement of 133.33 sq. yard is based on survey which was conducted in year 1999 and at Sr. No. 75 specific entry is there in which year of residence is mentioned as year 1965.
- iii. That residential house of answering respondent no. 11 is an old construction which is having water, electricity, underground sewerage connections and paved road constructed by concerned authorities and no new construction is carried on.
- iv. Respondent no. 11 is only connected/concerned with residential house constructed on the site for which certificate was issued by Nagar Nigam in the name of father for being in possession prior to 1965 which measures 133 sq. yard. The other two sites of alleged encroachments one is temple of the colony and open for all communities answering Respondent no. 11 does not have any specific right over that land. Third alleged encroachment sites is not in any manner connected to the answering respondent no. 11.

- v. That one alleged encroachment measuring 133.33 Sq. yard is residential house of answering respondent no. 11 which was allotted to the father of answering respondent no. 11. Second alleged encroachment is temple which is not in exclusive possession of the answering respondent no. 11, this temple site is managed by the family members of his father and their decedents and in last third alleged encroachment is not connected to answering respondent and it is true that answering respondent was made party illegally while presenting complaint Annexure-A15 by applicant only to pressurize the answering respondent for settling scores with answering respondent no. 11 for the reason that answering respondent no. 11 along with other members of the vicinity has objected to the encroachments made by the applicant. It is pertinent to mention that applicant has not disclosed an important fact that answering respondent no. 11 and applicant are in trail of litigation. It is pertinent to mention that residential house of answering respondent no. 11 is in khasra no. 5621/9105 and not in khasra no. 5621 as alleged by applicant. This fact is self evident from annexure-R-11/3 presented above.
- vi. No activity of alleged encroachment or construction work is continuing. The factual report submitted by the committee vide order dated 18.10.2023 by the order of this Hon'ble Tribunal clearly shows that no activity of recent past is going on alleged encroached sites.

7. The relevant records of Jaipur Nagar Nigam issued in the year 2003 Kacchi Basti Register copy and other relevant record has been filed by the applicant. It is further submitted that the case was filed before the Upkhand Adhikari Pratham Jaipur, Mahanagar Jaipur, which is for permanent injunction and matter is subjudice before the Civil Court.
8. Respondent No. 12 has filed the reply with the facts that there is a population of over 500 persons living at the alleged site prior to the acquisition. Further, that location of pillars are not identified and not known. All these contentions are covered under regulated activities, which are required to be considered by appropriate authority, which can be raised before the settlement officer forest or in case of any demolition before appropriate forum/civil court, since the residential building is of approx 60 years old.
9. In view of the above contention and the record as filed by the parties concerned we are of the view that it is not a case to be interfered with where there are a settled colony of more than 500 persons that too coming under the regulated activities. The monitoring committee as constituted in the Notification may suitably consider and pass appropriate order according to rules. No interference by this Tribunal is required.

The Original Application stands **disposed** of accordingly.

**Sheo Kumar Singh, JM**

**Dr. Afroz Ahmad, EM**

13<sup>th</sup> February, 2024  
O.A. No. 152/2023 (CZ)  
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