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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3241/2012

JAIN SHWETAMBER

KALYANAKTIRTH NAYAS ..... Petitioner

Through Mr. U.N. Bachawat, Senior Advocate  
with Mr. Anup Jain and Mr. Abhishek  
Baid, Advocates

versus

UOI AND ORS

..... Respondents  
Through Mr. Subhash C. Sharma, Advocate for  
R-1 to 3.  
Mr. Jayesh Gaurav with Mr. Gopal  
Prasad, Advocates for R-4 and 5.

% Reserved on : 15<sup>th</sup> May, 2014.  
Date of Decision : 28<sup>th</sup> July, 2014

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J:**

1. Present writ petition has been filed seeking quashing of order dated 24<sup>th</sup> March, 2009 passed by respondents and for issuing 'formal approval' for diversion of 0.8093 ha (2.00 acres) of land on Kolhua Hill, Bhaddilpur, Thana No. 339, Khata No. 01, Khesara No. 17, in the Chatra District, Jharkhand.

2. Petitioner organization is stated to be a registered religious and charitable trust, inter-alia dedicated to the cause of restoration of - at present - extinct Jain Tirthas and in restoration of cultural and religious heritage.
3. Brief facts of the present case are that on 25<sup>th</sup> August, 2006 petitioner applied for diversion of forest land and requested for issuance of No Objection Certificate for allotment of land recorded as 'jungle pahadi'. Though the justification for locating the project in forest area was that it is a place of great reverence and worship for Shwetamber sect, yet in the short narrative of the proposal annexed as Annexure A it was stated that on the eastern side of the tank, a Jain temple was renovated by Digambers in 1995 who assumed its control and management and Shwetamber sect in order to avoid conflict and maintain peace and harmony wanted to construct a new temple.
4. After the application for diversion of two acres of forest land in Jharkand for construction of temple was filed, the Collector Chatara issued the required no objection certificate for the applied diversion and sent it directly to the Divisional Forest Officer(DFO), Chatara vide his letter dated 7<sup>th</sup> May, 2008 pursuant to which the DFO forwarded the same to the Conservator vide letter dated 30<sup>th</sup> May, 2008.
5. Thereafter the State of Jharkand-Respondent No. 4 submitted the proposal for diversion of land to the Ministry of Environment and Forests (MoEF) of the Government of India on 27<sup>th</sup> September, 2008.
6. Subsequently, MoEF gave '*in principle approval*' vide its letter dated 24<sup>th</sup> November, 2008 subject to fulfilment of certain conditions. The relevant portion of the aforesaid letter is reproduced hereinbelow:-

"After careful consideration of the proposal of the State Government, the Central Government hereby agrees in principle for diversion of 0.8093 ha (2.00 acre) of forest land for Jain Shwetamber Kalyanak Tirth Nyas in Jharkhand State, subject to the fulfilment of the following conditions.

1. The State Govt. shall charge Net Present Value from the user agency as directed by Hon'ble Supreme Court and as per the guidelines issued by the Ministry of Environment & Forests vide letter No. 5-1/98-FC(Pt-II) dated 18<sup>th</sup> September and 22<sup>nd</sup> September, 2003 and subsequent order issued from time to time.
2. The User Agency will transfer the cost of planting 210 plants, ten times the trees to be felled/enumerated, to State Forest Department. The said 210 number of trees shall be planted up elsewhere in degraded forest land.
3. An undertaking from the user agency shall also be obtained to the effect that in case the rates of NPV are revised upwards, the additional/differential amount shall be paid by the User Agency.
4. The State Government shall deposit Net Present Value and all other funds with the Ad-hoc Body of Compensatory Afforestation Fund Management and Planning Authority (CAMPA), in Account No. CA-1587 of Corporation Bank (A Government of India Enterprises), Block-11, Ground Floor, CGO Complex, Phase-1, Lodhi Road, New Delhi - 110 003, as per the instruction communicated vide letter No. 5-2/2006-FC dated 20.05.2006.
5. The User Agency shall submit an undertaking to undertake plantation of small/ornamental trees on the available vacant space in the proposed area.

After receipt of compliance on fulfilment of the conditions 1 to 5 from the State Government formal approval will be issued in this regard under Section 2 of Forest (Conservation) Act, 1980. **Transfer of forest land to user agency and its non forestry use even otherwise should not be effected by the State Government till the final order approving diversion of forest land is issued by the Central Government."**

(emphasis supplied)

7. On 19<sup>th</sup> January, 2009, in compliance of aforesaid letter the Petitioner deposited vide Banker Draft Rs.12,09,992/-.

8. Post this development, the DFO conveyed to the Conservator of Forest that the Petitioner had fulfilled all conditions subject to which '*in-principle approval*' was granted by the MoEF Government of India, with a request that steps be taken for obtaining formal approval.

9. However, on 24<sup>th</sup> March, 2009 Petitioner received a copy of the impugned communication from the MoEF to the State Government stating that "*the in-principle approval granted to the present proposal was reviewed and it was found that this can not be allowed in view of para 4.5 (ii) chapter -4 of the Forest (Conservation) Act, 1980, Forest (Conservation) Rules, 2003 and guidelines & Clarifications thereunder. Therefore the in-principle approval granted earlier vide reference cited above is hereby withdrawn.*"

10. Mr. U.N. Bachawat, learned senior counsel for the Petitioner stated that the order of withdrawal of '*in principle approval*' was not only contradictory to the guidelines and clarifications issued by MoEF but also against the principles of natural justice inasmuch as the same had been passed without giving any opportunity of hearing to the petitioner.

11. Mr. Bachawat further stated that the Respondents arbitrarily withdrew the grant of '*in-principle approval*' on the misreading of para 4.5 (ii) of the Guidelines under the Forest (Conservation) Act, 1980 [for short Act, 1980] and Forest (Conservation) Rules, 2003 [for short 'Rules, 2003']. He stated that in fact the '*in-principle approval*' was in conformity with the guidelines in as much as:-

- a. the proposed construction was within one hectare.
- b. the construction of temple; dharamshala (community hall) and

dispensary were permissible in aforesaid para and thus there was an apparent error in reading para 4.5(ii) of the Guideline.

12. Mr. Bachawat also stated that after grant of '*in-principle approval*', the petitioner complied with all the conditions for the said grant and in course thereof made substantial investment and changed its position and as such impugned order of withdrawal was hit by the principles of promissory estoppel.

13. Mr. Bachawat also placed reliance on the judgment of the Apex Court in ***Daya Ram Vs. Raghunath and Others, (2007) 11 SCC 241*** wherein it has been held that a non-reasoned order is bad in law. The relevant portion of the above judgment reads as under:-

*"8. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.*

*9. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engg. Union [(1971) 2 QB 175 : (1971) 2 WLR 742 : (1971) 1 All ER 1148 (CA)] observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [(1974) 1 CR 120 : 1974 IRLR 56] it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before*

*court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking order. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."*

14. Lastly, Mr. Bachawat submitted that the proposed project (temple) should be permitted as it was admittedly in a rural area and it would serve the larger public interest and overall development of locality by providing employment opportunities and religious tourism.

15. On the other hand, Mr. Subhash C. Sharma, learned counsel for respondent nos. 1 to 3 relied on Section 2 of the Act, 1980 which provides that final approval of Central Government is a mandatory condition for diversion of forest area.

16. Learned counsel for respondent nos. 1 to 3 also submitted that the proposed land suggested for diversion was a forest land of the category 'jungle pahad' but as per the GT sheet, it touches a very large patch of protected forest which is dense mixed jungle of mainly 'Salai'. He stated that the respondent authorities were apprehensive that if religious amenities were created adjoining the forest areas there was high chance of encroachment in the forest areas in due course and in that situation the authority would find itself incapable in taking prompt and effective action against the encroachment due to sensitivities involved. The relevant paras of the counter-affidavit are reproduced herein-below:-

*"10. The proposed land suggested for diversion is a forest land of the category "Jungle Pahad". But as per the GT sheet, it touches a very large patch of protected forests which is dense mixed jungle of mainly 'Salai'. In general, whenever religious facilities are created adjoining to the forest areas there is always very*

*high possibility of encroachment into the forest areas in due course and the authorities find themselves handicapped in taking prompt and effective action against the encroachment by religious organisations due to sensitivities involved. Otherwise also, there would be demand in future for additional land due to increase in the influx of pilgrims. Therefore, such types of religious facilities should be developed in non-forest areas for which the State Govt. should find alternative sites. The forest land should be diverted only when no other alternatives are available and that too for public utilities like graveyard, land for burning dead bodies etc. and not for normal development like construction of temple etc.*

*11. That, it is further submitted that the respondent No. 3 after taking into consideration the facts stated above and with the approval of the Competent Authority in the MoEF vide its letter dated 24.03.2009 has withdrawn the in principle approval keeping in view para 4.5(ii) of the guideline given in the Forest (Conservation) Act, 1980. The said para of the guideline reads as below:-*

*"Diversion of forest land for construction of other buildings also will not be normally considered. However, such diversion may be allowed for construction of schools, hospitals/dispensary, community halls, cooperatives, panchayats, tiny rural industrial sheds of Govt. etc., which are to be put up for the benefit of the people of that area, but such diversion should be strictly limited to the actually needed area and further it should not exceed one hectare in each case."*

*12. That, it is pertinent to mention that Hon'ble Supreme Court of India in its order dated 29.09.2009 (Union of India Vs. State of Gujarat and Others) had as interim measure inter-alia directed "We direct that henceforth no unauthorised construction shall be carried out or permitted in the name of Temple, Church, Mosque or Gurudwara, etc. on public streets, public parks or other public places, etc. In respect of the unauthorized construction of*

*religious nature which has already taken place, the State and UT Government shall review the same on case to case basis and take appropriate steps as expeditiously as possible."*

17. Mr. Jayesh Gaurav, learned counsel for respondent nos. 4 and 5-State of Jharkhand stated that the land in question is situated in Jharkhand, and, therefore, this Court lacks territorial jurisdiction to hear and decide the present petition.

18. He also relied on relevant provisions for diversion of forest land as laid down in Act, 1980 and Rules, 2003 and Chapter-IV Para 4.5(ii) of the Guidelines under the Act, 1980.

19. In the opinion of this Court the disputes in the present case revolves around the interpretation of Chapter IV Paras 4.2(i) and 4.5 (ii) of the Guidelines under the Act, 1980. Therefore it is relevant to reproduce the same hereinbelow:-

*"4.2 Two Stage Clearance of Proposals*

*(i) Forestry clearance will be given in two stages. In 1st stage, the proposal shall be agreed to in principle in which usually the conditions relating to transfer, mutation and declaration as RF/PF under the Indian Forest Act, 1927 of equivalent non-forest land for compensatory afforestation and funds for raising compensatory afforestation thereof are stipulated and after receipt of compliance report from the State Government in respect of the stipulated conditions, former approval under the Act shall be issued.*

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*4.5 Diversion for Construction of Houses.*

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***The Central Government will not entertain any proposal for diversion of forest land for construction of residential or dwelling houses.***

*(ii) Diversion forest land for construction of other buildings also will not be normally considered. However, such diversion may be allowed for construction of schools, hospitals/dispensary, community halls, cooperatives, panchayats, tiny rural industrial sheds of the Government etc., which are to be put up for the benefit of people of that area, but such diversion should be strictly limited to the actually needed area and further it should not exceed one hectare in each case."*

20. A bare reading of the aforesaid provisions provides that diversion of forest land is only possible if the following conditions are met:

- a) Diversion is purely for the purpose of the community benefit as a whole residing in that area;
- b) Diversion is permitted for the construction of schools, hospitals/dispensary, community halls, corporative, panchayats, tiny rural industrial rule etc. and;
- c) Above all such diversion would only be permitted when it is actually needed in that area and it does not exceed one hectare.

21. In view of the above, this Court is of the opinion that the petitioner's application for diversion of a piece of forest land for the development of a temple could not have been permitted as the same is violative of Chapter IV Para 4.5(ii) of the Guidelines. The permissible projects are explicitly mentioned in the above provision and construction of a temple is certainly not one of the permitted projects.

22. This Court is also of the view that the impugned order dated 24<sup>th</sup> March, 2009 revoking the '*in principle approval*' was not contradictory but in consonance with the guidelines and clarifications issued by MoEF. In fact the '*in principle approval*' granted on 24<sup>th</sup> November, 2008 to the petitioners was non-est, illegal and contrary to the government guidelines and norms.

23. Moreover, in the opinion of this Court, estoppel cannot be invoked against a policy/statute. The Supreme Court in ***Dr. Ashok Kumar Maheshwari Vs. State of U.P. and Another, (1998) 2 SCC 502*** has held as under:

*"22. Whether a promissory estoppel, which is based on a "promise" contrary to law can be invoked has already been considered by this Court in Kasinka Trading v. Union of India as also in Shabi Construction Co. v. City & Industrial Development Corpn. wherein it is laid down that the rule of "promissory estoppel" cannot be invoked for the enforcement of a "promise" or a "declaration" which is contrary to law or outside the authority or power of the Government or the person making that promise."*

24. Further, the petitioners prayer of violation of principles of natural justice cannot be upheld since in any case the earlier permission (*in-principle approval*) dated 24<sup>th</sup> November, 2008 was subject to final approval by the Central Government. The Central Government acted well within its statutory discretion in not granting final approval to the petitioners proposal.

25. Also, principles of natural justice are not to be placed in a 'strait jacket' as they are no 'unruly horse'. The Supreme Court in ***Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764*** has observed as follows:

*"44. We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the*

*general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of audi alteram partem. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten the forbidden fruit. (See R. v. University of Cambridge [(1723) 1 Str 557 : 93 ER 698] .) But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: “‘To do a great right’ after all, it is permissible sometimes ‘to do a little wrong’.” [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India [(1990) 1 SCC 613] (Bhopal Gas Disaster), SCC p. 705, para 124.] While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than “precedential”.*

(emphasis supplied)

26. Lastly, in a catena of judgments involving degradation of the environment the Apex Court has held that individual interest or smaller public interest must yield to larger public interest. The inconvenience of some shall be bypassed for larger interest or cause of society. Recently, in **G. Sundarrajan Vs. Union of India (UOI) and Ors., (2013) 6 SCC 620** the Supreme Court has held as under:-

*"190. Following the Stockholm Conference the second landmark on environmental protection and development was "the United Nations Conference on Environment and Development (UNCED), 1992" (the Rio Summit). The Conference was held at Rio (Brazil) in the year 1992 which addressed the twin problems of environment and development. The Rio Declaration sets out general non-binding commands for "sustainable development" i.e. "human beings who*

*are at the centre of sustainable development concerns have to exercise their right to healthy and productive life in harmony with nature". The Rio Conference also highlighted the principle of inter-generational equity. Principles like "precautionary principle" so as to prevent the environmental degradation and the principle of "polluter pays" i.e. "to bear the cost of pollution with due regard to public interest" were highlighted. The Conference resulted in conclusion of a treaty on climate change with a general recognition of the importance of curbing emission of greenhouse gases, another treaty on biodiversity aiming at the preservation of flora and fauna was also concluded. The Rio Conference also adopted Agenda 21. Section II of that Agenda deals with topics like protection of the atmosphere, land resources, deforestation, sustainable agriculture and rural development, conservation of biodiversity, protection of oceans, fresh water, toxic chemicals management, hazardous waste management, solid waste management and radioactive waste management.*

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*240. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society....."*

(emphasis supplied)

27. In the present case the temple proposed to be built is meant for a religious community and their interests and the same cannot be allowed to supersede the interests of the public at large. Protection of forests and environment is essentially important in view of increasing emission of greenhouse gases. The need of the hour is protecting the nation's air and water, preserving many endangered species and preventing habitat destruction and large scale afforestation.

28. Consequently, present writ petition being devoid of merits is dismissed but with no order as to costs.

**MANMOHAN, J**

**JULY 28, 2014**

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