

GAHC010112082021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/52/2021

DWIJEN BHATTACHARYA AND ANR.
S/O LATE TIRTHANATH BHATTACHARYA, R/O CHITRABAN ENCLAVE, 1ST
FLOOR, R.G.B. ROAD, GUWAHATI, DIST. KAMRUP (M), ASSAM.

2: RAJESH SARMA

S/O LATE DEBESH SARMA
R/O AMBIKAGIRI NAGAR
R.G.B. ROAD GUWAHATI
DIST. KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 11 ORS.
REPRESENTED BY THE CHIEF SECY. GOVT. OF ASSAM, ASSAM
SACHIVALAYA, DISPUR, GUWAHATI 781006

2:THE CHIEF SECY.
GOVT. OF ASSAM
ASSAM SACHIVALAYA
DISPUR
GUWAHATI 781006

3:THE PRINCIPAL SECY.
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
ASSAM SACHIVALAYA
DISPUR
GUWAHATI 781006

4:THE DIRECTOR GENERAL OF POLICE
GOVT. OF ASSAM
ASSAM POLICE H.Q. ULUBARI

GUWAHATI 781007

5:THE COMMISSIONER AND SECY.
DEPTT. OF ENVIRONMENT AND FOREST
GOVT. OF ASSAM
ASSAM SACHIVALAYA
DISPUR
GUWAHATI 781006

6:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
ARANYA BHAWAN
PANJABARI
GUWAHATI 781037

7:THE DIVISIONAL FOREST OFFICER
GUWAHATI WILDLIFE DIVISION
P.O. BORGURI
P.O. BORGURI
PIN 786126
DIST. KAMRUP (M)

8:THE PRINCIPAL SECY.
DEPTT. OF TOURISM
GOVT. OF ASSAM
ASSAM SAVCHIVALAYA
DISPUR
GUWAHATI 781006

9:THE MANAGING DIRECTOR
ASSAM TOURISM DEVELOPMENT CORPORATION LTD.
GOVT. OF ASSAM
A.K. AZAD ROAD
PALTAN BAZAR
GUWAHATI 781001

10:THE CHAIRMAN
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI 781001

11:THE CHAIRMAN
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GUWAHATI.

12:THE DEPUTY COMMISSIONER KAMRUP (M)
PANBAZAR
GUWAHATI 78100

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

Date : 16-02-2023

JUDGMENT & ORDER (ORAL)

(A.M. Bujor Barua, J)

Heard Mr. V Rajkhowa, learned counsel for the petitioners, Mr. RK Bora, learned Additional Senior Government Advocate for the respondents No. 1, 2, 3, 4, 8 and 12 respectively being the Chief Secretary to the Government of Assam, Principal Secretary to the Government of Assam in the Home and Political Department, the Director General of Police, Assam, The Principal Secretary, Department of Tourism, Government of Assam and the Deputy Commissioner, Kamrup (M), Mr. SM Hasan, learned counsel for the respondents No. 5, 6 and 7 respectively being the Commissioner and Secretary, Department of Environment and Forest, Government of Assam, the Principal Chief Conservator of Forest and the Divisional Forest Officer, Guwahati Wildlife Division, Mr. A Borpujari, learned counsel for the respondent No. 9 being the Managing Director, Assam Tourism Development Corporation Limited and Mr. S Bora, learned counsel for the respondents No. 10 and 11 being the authorities under the Guwahati Municipal Corporation and Guwahati Metropolitan Development Authority.

2. The petitioner No. 1 Sri Dwijen Bhattacharya is a senior citizen as well as a businessman by profession and also the President of the Zoo Narengi Tiniali Byabashayee Committee and General Secretary of Geetamandir Bachao

Committee, whereas the petitioner No. 2 Sri Rajesh Sarma is also a businessman and General Secretary of Brihatar Zoo Narengi Ancholik Unnayan Samiti. The Zoo Narengi Road (subsequently renamed as Mother Teresa Road) in the city of Guwahati connects the Radha Govinda Barua Road with NGB Try junction at the locality called Forest Gate.

3. Although the area in and around the both sides of the Zoo Narengi road are thickly populated residential areas, but adjacent to the Zoo Narengi road towards the eastern side exists a hill in the name of Gita Mandir Hill. There exists a Temple at the top of the Gita Mandir Hill which is called the Gita Mandir. But from the level of the plains area up to the top of the hill comprising of the Temple, the entire area is thickly covered forest area. The petitioners also place a satellite photo of the Gita Mandir Hill, which itself makes it discernible that from the level of the plain area from which the hill exist, except for the very small portion comprising of the Gita Mandir Temple, the rest of the area comprises of thick forest and no construction of any kind had been undertaken over the hill as revealed by the photograph as well as, as admitted by the respondents.

4. The petitioners institute this public interest litigation (in short PIL) on the premise that the aforesaid forest area is the only surviving green area in the locality and also one of the very few green areas that are yet to be destroyed within the city of Guwahati and therefore, have raised a public cause that it would be in the interest of the public if the forest area is retained and not converted to any other non-forest area including commercial ventures.

5. The State of Assam through the Revenue Department has stated that as per the land records, the entire Gita Mandir Hill area comprises of revenue land and no settlement had been made to any person over the land of the Gita

Mandir Hill even under the Assam Land and Revenue Regulations, 1886 except for a small portion on the top of the hill where the land had been allotted to the Gita Samaj where the Gita Mandir Temple presently exists.

6. In course of the deliberation before the Court even the Environment and Forest Department of the Government of Assam on principle is agreeable that if the surviving forest area in the Gita Mandir Hill can be preserved, it would be in the greater public interest and by taking such stand, the respondents in the Environment and Forest Department are in agreement with the cause raised by the petitioners in this PIL petition.

7. It is heartening to note the stand of the Environment and Forest Department of the Government of Assam, which no doubt has to be accepted to be a stand made by the Department in the public interest. The harm that has been caused to the environment is no longer a debatable issue as to whether any harm has been caused or not and a judicial notice can always be taken, more so, considering the recent variable climatic condition prevailing all over the world that something urgently is required to be done.

8. From such point of view, if we notice that there is an opportunity to do something in favour of the environment, we see no reason of any kind as to why it should not be carried forward and brought to its logical end. The Guwahati city is a sprawling area comprising of an area of 216.79 sq km, where a very few space still exists where the land has not been used for any non-forest or commercial purpose. Considering the limited land that is available within the city of Guwahati, where a green cover still exists, it is more so in the requirement of public interest that such small but yet existing green cover be preserved to the maximum extent that is possible, which will not only be beneficial for the environment as a whole, but also to the citizens and residents

of the city of Guwahati.

9. Admittedly, the forest laws governing the State of Assam are governed by the Assam Forest Regulations, 1891 (in short Regulations 1891). Section 5 of the Regulations 1891 enables the State Government to constitute any land a reserved forest by following the procedure prescribed therein. The very empowerment of the State Government to constitute any land a reserved forest makes it apparent that even a land which otherwise is a revenue land under the Government of Assam, if comprises of a thick forest, can also at the wisdom of the State Government be declared to be a reserved forest, if it is deemed to be in the public interest.

10. Although the Indian Forest Act, 1927 (in short Act of 1927), as such may not be applicable to the State of Assam, but we take note that in the Act of 1927, there is also a residual power under section 29 thereof that the State Government may by notification in the official Gazette declare that in respect of any forest land or waste land which is not included in a reserved forest, but which is a property of the Government or over which the Government has proprietary right, to the whole or any part of the forest produce, the Government may declare such land to be a protected forest.

11. Be that as it may, taking note of the issue in the public interest raised by the petitioners regarding maintaining the forest cover on the Gita Mandir Hill, as well as the stand of the respondents in the Government of Assam including that of the Environment and Forest Department that it would be in the public interest to maintain the forest cover, we are in concurrence with such view that maintaining the forest cover would be in the interest of the environment of the entire region as well as in the public interest, more so, as already noted, considering that the availability of green covered forest land within the city of

Guwahati is almost next to negligible.

12. Accordingly, the Chief Secretary to the Government of Assam is directed to coordinate the matter with the Environment and Forest Department to the Government of Assam, the Revenue Department to the Government of Assam as well as the Gauhati Development Department to take a conjoint conscious decision on the aspect as to in what manner the existing Forest cover in the Gita Mandir Hills of Guwahati city can be conserved either by way of declaring it to be a reserved forest or by any other means of protecting the forest as may be available under the law and in doing so an earnest effort be made to preserve the forest cover that is in existence in the Gita Mandir Hill.

13. We also take note of the provisions of Section 2 of the *Forest (Conservation) Act, 1980* which is extracted as below:

“2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.—Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing, -

(i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other

organization not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation."

14. Section 2 of the Forest (Conservation) Act, 1980 begins with a non obstante clause '*notwithstanding*' by providing that notwithstanding anything contained in any other law for the time being in force, no State Government or any other authority shall authorize without the prior approval of the Central Government to use any land within the reserved forest or any forest land or any portion thereof for any non-forest purpose of any kind.

15. The expression '*forest*' in Section 2 of the Forest (Conservation) Act, 1980, has already been interpreted by the Supreme Court in *T.N. Godavarman Thirumulkpad v. Union of India and others reported in (1997) 2 SCC 267* that the term 'forest land' appearing in Section 2 of the Forest (Conservation) Act, 1980 will not only include forest as understood in the dictionary meaning but also any area recorded as forest in the Government record irrespective of the ownership.

16. In *Narinder Singh and others v. Divesh Bhutani and others in Civil Appeal No. 10294 of 2013* in paragraph 39 the Hon'ble Supreme Court had provided that the Legislature has used the words "*any forest*" in Clauses (ii) to (iv) of Section 2 of the Forest (Conservation) Act, 1980 after referring to the reserved forest in Clause (i) of the said section, which gives the interpretation that the intention of the Legislature is to bring all the forests, whether covered by the Indian Forest Act, 1927 or not, within the sweep of the Forest (Conversation) Act, 1980.

17. A conjoint reading of the meaning given to the expression '*forest*' in *T.N. Godavarman Thirumulkpad (supra)* and *Narinder Singh (supra)* makes it discernable that for the purpose of protection and restriction of use of any forest into non-forest use the word forest would have to be given into a meaning of wide connotation which would mean that any standing forest over a given particular area would also have to be understood to be a forest for the purpose of its conservation. Upon application of the wider meaning and connotation of the expression '*forest*' we can safely conclude that the restrictions under Section 2 of the Forest (Conservation) Act, 1980 would also be applicable to the forest cover on the Gita Mandir Hill of Guwahati, whether or not such forest cover is declared either to be a reserved forest or a protected forest. Upon any such decision that may be taken, the restriction of conversation of the use of the land covered by the aforesaid forest into non-forest area would henceforth be applicable.

18. Accordingly, the respondents in the Government of Assam in the Forest Department as well as to the Chief Secretary is directed to ensure that the existing forest over the Gita Mandir Hills in Guwahati is not used for any other non-forest purpose in terms of Section 2 of the Forest (Conservation) Act, 1980 without following the due procedure of law prescribed therein. The said direction imposing a restriction on any non-forest use of the forest cover of the Gita Mandir Hill is issued over and above the earlier direction to the Chief Secretary to the Government of Assam to take a decision conjointly with the Environment and Forest Department to the Government of Assam, the Revenue Department to the Government of Assam as well as the Gauhati Development Department as to whether the land under forest cover on the Gita Mandir Hills can be notified as reserved forest or protected forest.

19. A copy of this order be made available to the Chief Secretary to the Government of Assam for doing the needful and also for strict implication thereof.

20. We appreciate the act on the part of the two petitioners to bring the aforesaid issue to the notice of the Court which is undoubtedly in the public interest.

21. A copy of the satellite photograph provided by the petitioner is kept on record.

PIL stands allowed in the above terms.

JUDGE

JUDGE

Comparing Assistant