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

+ **LPA 600/2014**

Date of Decision: 19.08.2016

JAIN SHWETAMBAR KALYANAK TIRTH NYAS.

.....Petitioner

Through : Mr.Ashok Kr. Jain with Mr.Anup Jain
and Mr.Abhishek Baid, Advocates.

Versus

UNION OF INDIA & OTHERS

.....Respondents

Through : Mr.Rajesh Kumar, Advocate for R-1 to
R-3
Mr.Vikas Shokeen, Advocate for R-4
Mr.Jayesh Gaurav and Mr.Gopal Prasad,
Advocates for R-4 & 5.

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HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

MS. G. ROHINI, CHIEF JUSTICE (ORAL)

1. The unsuccessful petitioner in WP (C) 3241/2012 has filed the present Letters Patent Appeal.
2. The appellant/writ petitioner, which claims to be a registered religious and charitable trust filed the said writ petition with a prayer to quash the order of the respondents dated 24.03.2009 withdrawing the 'in-principle approval' granted earlier by order dated 24.11.2008 for diversion of forest land stating that the same is impermissible in view of the provisions of Forest (Conservation) Act, 1980 and the Rules made

thereunder. The writ petition was dismissed by the learned Single Judge by the order under appeal dated 28.07.2014 observing as under:

"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.

XXXX XXXX XXXX XXXX

4.5 Diversion for Construction of Houses.

XXXX XXXX XXXX XXXX

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 24th 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 24th November, 2008 to the petitioners was non-est, illegal and contrary to the government guidelines and norms."

3. The contentions of the writ petitioner that the impugned order dated 24.03.2009 was against the principles of natural justice and that it was hit by the principles of promissory estoppel were also rejected by the learned Single Judge placing reliance upon the decisions of the Supreme Court in *Ashok Kumar Maheshwari vs. State of U.P. and Another; (1998) 2 SCC 502* and *Ajit Kumar Nag vs. Indian Oil Corpn. Ltd.; (2005) 7 SCC 764*.

4. Assailing the said order, it is contended by the learned counsel for the appellant that the extent of the land diverted being less than one hectare and moreover the construction proposed by the appellant is for overall development of the area and serves larger public interest, the

withdrawal of the 'in-principle approval' is arbitrary and illegal. It is also contended that since "Kolhua Hill" where the land in question is situated is a place of reverence and temples of all religions i.e. Hindu, Jain and Buddha, etc. are already existing, the learned Single Judge ought not to have held that the purpose for which the diversion was sought was not in conformity with the Guidelines.

5. We have also heard the learned counsel for the respondent and perused the material available on record.

6. A perusal of Paras 4.2 and 4.5 of the Guidelines under the Forests (Conservation) Act, 1980 shows that diversion of forest land is permissible only where the diversion is for the purpose of community benefit as a whole residing in that area or where the diversion is for the construction of schools, hospitals, community halls, etc. More particularly, diversion is permissible only when it does not exceed one hectare.

7. Admittedly, the 'in-principle approval' dated 24.11.2008 for diversion of the forest land in favour of the appellant/writ petitioner was granted for construction/development of "Jain Shwetambar Kalyanak Tirth Nyas" for the benefit of Jain Tirthas all over the world. That being the case, the proposed diversion failed to meet the essential condition of the Guidelines that the diversion is permissible only when it is actually needed in that area. The learned Single Judge was therefore right in holding that the 'in-principle approval' for diversion which was not in conformity with the Guidelines under the Act was non-est and illegal. Withdrawal of such order, in our considered opinion, cannot be held to be illegal on any ground whatsoever. It is also relevant to note that the 'in-

principle approval' dated 24.11.2008 having been granted subject to the final approval by the Central Government, it is well within the competence of the Central Government to withdraw the same.

8. For the aforesaid reasons, the order under appeal warrants no interference by us. The appeal is accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J.

AUGUST 19, 2016

gr/pmc