

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 1132 of 2023

Samit Sur & Ors.
-versus
The State of West Bengal & Ors.

Mr. Saptargshu Basu, Sr. Adv,
Mr. Ayan Banerjee,
Mr. Deborshi Dhar
...For the Petitioner.

Mr. Subir Kumar Saha
Mr. Bikaramaditya Ghosh
... For the State

Affidavit of service filed in Court today is taken on record.

The petitioners say that they undertook a construction work on their land close to Gorumara National Park in the district of Jalpaiguri, West Bengal. After commencement of the construction work the Hon'ble Supreme Court delivered a judgment on 3rd June, 2022 reported in **(2022) 10 SCC 544 [T.N. Godavarman Thirumulpad vs. Union of India and Anr.]**. In the said judgment in para 56.5 the following was directed:-

"56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such

activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the a prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ”.

On the basis of the direction given in the said judgment, a stop work notice was issued on 27th December, 2022.

The petitioners contending that the construction work undertaken by them was an ongoing construction on the date of the judgment and order i.e. 3rd June, 2022, applied to the competent authority for necessary approval to continue with the construction work. The application made by the petitioners was not disposed of but was partially addressed by a reply dated 25th April, 2023. A copy whereof is annexed to the writ petition at page 68. The petitioners say that immediately after the said letter dated 25th April, 2023, the Hon’ble Supreme Court by a judgment and order dated 26th April, 2023 passed in the same matter deleted the direction given in paragraph 56.5 of its judgment and order dated 3rd June, 2022. In para 66, the Hon’ble Supreme Court while disposing of the applications filed in the same

matter wherein the judgment and order dated 3rd June, 2022 was passed has observed as follows:-

“66. We also modify the directions contained in paragraph 56.5 of the order dated 3rd June, 2022 (supra) and replace the same as under:

- (i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February, 2011 and so also the provisions contained in the ESZs notifications pertaining to the respective protected Areas with regard to prohibited activities, regulated activities and permissible activities;
- (ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May, 2022 issued by MoEF & CC’.

The petitioners contend that after the judgment and order dated 26th April, 2023 having come into effect the only thing which is required to be considered is the notification dated 9th February, 2011. The petitioners also contend that under the notification dated 9th February, 2011 there is no embargo in allowing the petitioners to continue with the construction work as

the same does not infringe any part or portion of the said notification. The petitioners, therefor, say that necessary permission be granted to the petitioners for proceeding with the unfinished construction work and complete the same by withdrawing the stop work notice.

On behalf of the respondents it is submitted that the judgment and order dated 3rd June, 2022 created an embargo against the petitioners in carrying out the construction work. However, in view of the changed circumstances, pursuant to the judgment and order dated 26th April, 2023, the policy could not be finalized as yet.

After hearing the parties and considering the materials on record I find that no writ of mandamus and/or direction in the same nature can be issued at this stage directing the respondent to permit the petitioners to restart the construction work. At the same time the petitioners cannot be left in an uncertain state after having invested their good money in the construction work. The petitioner should be informed whether they are entitled to complete the construction or have to abandon the same so that they can make their necessary planning with regard to the construction. The issue, therefor, is as to whether the petitioners are entitled to or are not entitled to go ahead with further construction and the same has to be brought to a logical conclusion.

In the aforesaid facts and circumstances, the respondent authorities are directed to consider the petitioners' application dated 17th April, 2023, afresh, in the light of the two judgments and orders delivered by the Hon'ble Supreme Court respectively dated 3rd June, 2022 and 26th April, 2023 in the case of T.N. Godavarman Thirumulpad (supra) by a reasoned order after giving the petitioners an opportunity to represent. The entire exercise should be completed within a period of two months from date.

The writ petition is accordingly is disposed of.

Since I have not called for any affidavits, allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of requisite formalities.

(Arindam Mukherjee, J.)