

Chatter Singh & others Vs. State of H.P. & others & connected matters.

CWP No. 1093 of 2016 a/w CWP No.1028 of 2002, CWP No.7341 of 2011, CWP No.9809 of 2011, CWPIL No. 17 of 2014, CWPIL No.9 of 2015, CWPIL Nos. 178 and 309 of 2017, CWPIL No. 19 of 2018, CWP No.91 of 2019, CWP No.281 of 2019 CWP No.951 of 2019, CWP No.1159 of 2019, CWP No.1596 of 2019, CWP No.1692 of 2019, CWP No. 1749 of 2019 and CWP No. 1051 of 2014.

CWP No. 1301 of 2016 a/w CWPs No.1434, 1940, 2046, 2119, 2120, 2121, 2140, 2296, 2477, 2638, 2639, 2652, 2711, 2720, 2779, 2786, 2787, 2805, 2826, 2830, 2834, 2836, 2842, 2843 to 2845, 2850, 2851, 2852, 2853, 2854, 2866, 2867, 2868, 2869, 2892, 2895, 2910, 2911, 2913, 2914, 2916, 2921, 2922, 2960, 2961, 2985, 2986, 2997, 2998, 3001, 3002, 3003, 3012, 3039, 3085, 3088, to 3090, 3092, 3118, 3120, 3125, 3144, 3154, 3161, 3190, 3212, 3213, 3253, 3298, 5 and 539 of 2016.

CWP No. 1017 of 2017 a/w CWPs No. 1038, 1097, 1122, 1128, 116, 1341, 1348, 15, 158, 159, 1620, 173, 178, 1754, 179, 1795, 180, 181, 189, 190, 192, 1947, 195, 1973, 1974, 1988, 1989, 1990, 2017, 2046, 2070, 2071, 2072, 2073, 2133, 2195, 221, 222, 223, 228, 241, 242, 2446, 2447, 2517, 255, 2605, 2606, 2607, 262, 271, 2657, 2718, 272, 2748, 2750, 281, 287, 288, 2917, 2922, 299, 309, 314, 330, 336, 337, 338, 344, 345, 349, 352, 360, 369, 391, 412, 415, 418, 419, 427, 428, 464, 474, 478, 497, 519, 520, 522, 536, 564, 623, 668, 669, 681, 684, 685, 693, 775, 778, 811, 82, 844, 870, 877, 878, 894, 91, 92, 935 and 96 of 2017.

CWP No. 34 of 2018 a/w CWPs No.11, 12, 35, 37, 53, 57, 58, 91, 99, 146, 200, 203, 204, 206, 207, 208, 227, 269, 341, 342, 343, 344, 345, 398, 399, 400, 411, 412, 429, 503, 510, 514, 621, 770, 849, 850, 877, 893, 908, 929, 944, 949 to 952 976, 977, 999, 1055, 1063, 1064, 1067, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1103, 1104, 1162, 1163, 1137, 1161 to 1163, 1170, 1192, 1194, 1195, 1197, 1200, 1205, 1267, 1268, 1333, 1410, 1528, 1533, 1620, 1621, 1709, 1804, 1805, 1887, 1934, 1953, 2018, 2057, 2070, 2073, 2144, 2145, 2161, 2162, 2334, 2335, 2336, 2377 of 2018, CWP Nos. 91 and 281 of 2019 CPMOs No. 503 & 504 of 2016.

CWP No.3123 of 2020.

CWP Nos.3724, 6774, 6775, 6786, 6814, 6821, 6822, 6823 of 2021.

CWP No.2923, 3573, 5641, 8481 of 2022.

Review Petition Nos.3, 4, 5, 6, 7, 8, 235, 248, 258, 293 of 2022.

CWP No.981, 1676 of 2023 & CWPIIL No.7 of 2023.

17.07.2024 Present: Mr.Surender Sharma, Advocate, for the petitioner in CWP No.1028 of 2002.

Mr.J.L. Bhardwaj, Senior Advocate, as Amicus Curiae alongwith Ms.Dhanwanti, Advocate, in CWPIIL No. 17 of 2014.

Mr.Abhimanyu Rathore, Advocate, for the petitioner in CWP No.1093 of 2016.

Mr.Prem P. Chauhan, Ms.Shikha Rajta, Advocates (through Video Conferencing) & Ms.Tara Devi, Advocate, for the petitioner in CWPIIL No.7 of 2023 and CWP Nos.2900, 2873 and 3387 of 2022.

Mr.B.S. Chauhan, Mr.Anand Sharma, Mr.B.N. Misra, Mr.V.S. Chauhan, Mr.Romesh Verma, Senior Advocates, with M/s Munish Dhatwalia, Vikrant Thakur, Rajesh Kumar Karan Sharma, Vandana Mishra, Sumit Sharma, Ashok Kumar Tyagi, Raju Ram Rahi, Lalit Kumar Sehgal, Vinod Chauhan, Naresh K. Sharma, Maan Singh, Vanshaj Azad, C.N. Singh, Kulbhushan Khajuria, G.R. Palsra, Nitin Thakur, Mohan Singh, Vipinder Roach, Bodh Raj, Surinder Saklani, Mr.Praveen Chauhan, Advocate, vice Mr.Y.P. Sood, Mr.Jeevesh Sharma, Vinod K. Thakur, Arun Kumar, Rakesh K. Sharma, Vivek Sharma Sanjay Kumar Sharma, Manohar Lal Sharma, Karan Singh Kanwar, Sunil Chauhan, Advocates and Ms.Mamta Bhatwan, vice Mr.B.N. Sharma, Advocate for the petitioner(s) in respective petitions.

Mr.Anup Rattan, Advocate General, alongwith Mr.Baldev Singh Negi, Additional Advocate General, for respondents-State.

Mr.Lokender Paul Thakur, Senior Panel Counsel, for Union of India.

Mr.Sandeep Sharma, Advocate, for respondents No. 10 and 11 in CWPIIL No. 17 of 2014.

Mr. R.K. Bawa, Senior Advocate, alongwith M/s Ajay Kumar Sharma, Sunil Mohan Goel, Jai Ram Sharma, Paras Dhaulta, Advocates, for the respective respondents.

Mr.Aman Sood, Advocate in CWPIIL No. 178 of 2017.

CMP No.10558 of 2024 in CWP No.1028 of 2002

This application has been filed for impleading the applicant as petitioner No.3, whose details have been mentioned in para-2 of the application.

In the application, general averments with respect to encroachment of Government land have been made with further submissions that for complete effectual adjudication of the matter, it is essential that the proposed applicant be impleaded as party as petitioner before passing any appropriate orders. However, nothing has been stated with respect to the locus of the applicant, entitling her to become party, that too as petitioner in the present matter but without referring any reason that how and why her impleadment is essential for adjudication of the petition.

Moreover, original petitioners have *dominus litis* to add or delete parties to the petition, more particularly to implead a stranger as petitioner among them.

There may be a case where some person being necessary party and some times as proper party may be required to be added as a party to proceedings.

For want of any material warranting such necessity in present case, we are of the considered opinion that applicant is neither necessary nor a proper party to the present *lis*, and as such application is dismissed being misconceived and disposed of accordingly.

CWP No.1028 of 2002

This petition has been filed assailing validity of Section 163-A of the Himachal Pradesh Land Revenue Act, 1953 (in short 'the Act') and to strike down Himachal Pradesh Regulation of Encroachments (in Certain Cases) on Government Land and Disposal of Government Land Rules, 2002 (hereinafter referred to as

'Rules 2002') framed exercising the powers conferred by Section 163-A of the Act.

Admittedly, these Rules 2002 provide provisions and procedure for regularization of encroachment in certain cases on the Government Land.

Sections 2(b) and 2(d) of Rules 2002 define encroacher and land as under:-

"2(b) "encroacher" means the person who has encroached upon the Government land unauthorisedly in contravention of the provisions of section 163 of the Act;
... ..

2(d) "land" means the Government land or common land which has been encroached upon by any encroacher unauthorisedly."

It is apt to record here that Section 2 of the Forest (Conservation) Act, 1980 imposes restriction on the de-reservation of forests or use of forest land for non-forest purpose except with the prior approval of the Central Government, which reads as under:-

"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 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 used 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 organisation 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.

Explanation.-For the purposes of this section non-forest purpose means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.”

Explanation to the aforesaid Section, clarifies that breaking up or clearing of any forest land or portion thereof for cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticulture crops or medicinal plants, and even any purpose other than reafforestation, shall amount to using such land for non-forest purpose.

Admittedly, it is not case of the Government of H.P. either in written reply or in oral submissions that a case for approval of the Central Government has been submitted for regularization of the encroachment in the forest land.

In this regard stand of respondent No.3-Union of India taken in reply is as under:-

“(2) It is submitted that provisions of Forest (Conservation) Act, 1980 are applicable to all the lands covered by Government of Himachal Pradesh Notification dated 25.2.1952 and on all such government lands no encroachment can be regularized by the state Government without obtaining prior approval of Government of India under Forest (Conservation) Act, 1980.

(3) It is submitted that Government of India, Ministry of Environment & Forests has already taken up the matter regarding encroachments on forest lands with state Governments and it has issued necessary directions to the state Governments to remove all the illegal encroachments from forest lands. Further, ministry has given certain suggestions to the state Government (Annexure-II) for eviction of encroachments from forest lands in a time bound manner which includes constitution of State Level Monitoring

Committee under the Chairmanship of Chief Secretary to monitor the removal of encroachments.

(4) It is submitted that no encroachment on any forest land can be regularized by the state Government without obtaining prior approval of Government of India under Forest (Conservation) Act, 1980. Union of India is against regularization of encroachments on forest lands and it has already directed the state Governments to remove the encroachments from forest lands in a time bound manner. The Ministry has also written to Government of Himachal Pradesh to ensure that no encroachment on any government land covered by Government of Himachal Pradesh notification dated 25.2.1952 is regularized by the state Government."

In *T.N. Godavarman Thirumulpad vs. Union of India*, (2022) 4 SCC 289: (in paragraph 26) word forest has been elaborately explained as under:-

"The words "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.

Aforesaid meaning of the 'forest' has also been reiterated in paragraph-5 of the case *T.N. Godavarman Thirumulpad vs. Union of India*, reported in (2024) 3 SCC 438.

In *Tata Housing Development Co. Ltd. vs. Aalok Jagga*, (2020) 15 SCC 784 (in paragraph 31) the Supreme Court has observed as under:-

"By virtue of the "Doctrine of the Public Trust" certain common properties such as forests are held by the Government in trusteeship for the free and unimpeded use of the general public. As per the said doctrine forests being a gift of nature, should be made freely available to everyone irrespective of the status in life. Besides it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes."

Safeguarding of forest has also been recognised by our Constitution under Article 48-A which obliges the State to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51-A clause (g) enumerates the fundamental duty of every citizens of India to protect and improve the natural environment including the forests, lakes, rivers, wildlife.

The provisions of Section 2 mandate strict and punctilious compliance. Mere substantial compliance is not enough. Violation of law is a reflection on the nature of governance. Reference in this respect can be made to case reported as ***H.P. Bus-Stand Management & Development Authority vs. Central Empowered Committee, (2021) 4 SCC 309***, relevant extract whereof is being reproduced hereinbelow:-

63. In ***M.C. Mehta (Kant Enclave Matters) vs. Union of India***, a two-judge Bench of this Court held that the land notified under the Punjab Land Preservation Act, 1900 in the Kant Enclave was to be treated as “forest land”. As a result, any construction made on the land or its utilisation for “non-forest purposes” without the Central Government approval was violative of the Forest Act and therefore illegal. The relevant excerpt of this Court’s decision, speaking through Madan B. Lokur, J., is as follows: (SCC p. 445, para 132)

“132... ..R. Kant & Co. and the Town and Country Department of the State of Haryana being fully aware of the statutory Notification dated 18-8-1992 and the restrictions placed by the notification. R. Kant & Co. and the Town and Country Department of the State of Haryana were also fully aware that Kant Enclave is a forest or forest land or treated as a forest or forest land, and therefore, any construction made on the land or utilisation of the land for non-forest purposes, without the prior approval of the Central Government, would be illegal and violative of the provisions of the Forest (Conservation) Act, 1980. Notwithstanding this, constructions were made (or allowed to be made) in Kant Enclave with the support, tacit or otherwise, of R. Kant & Co. and the Town and Country Department of the State of Haryana. They must pay for this.”

64. In the present set of appeals, the forest land was allowed to be used by the MoEF for the specific purposes of constructing a “parking space” and “bus-stand” in McLeod Ganj. MoEF made a conscious decision not to modify the terms of this permission, even when granted an opportunity to do so. Hence, any construction undertaken by the second respondent, even with the tacit approval of the appellant being a statutory authority under the H.P. Bus-Stands Act, will be illegal.”

It is apparent from the aforesaid observations that in case Rules 2002 are not quashed and set aside by this Court even then also, the Government land covered under these Rules shall not include forest land for want of necessary approval of the Central Government and regularization, if any, shall be possible of the encroachment upon non-forest Government land only, and in case Rules are struck down then also, encroachment of forest land cannot be regularized.

Therefore, we are of the considered opinion that all writ petitions tagged with present petition require to be taken separately one by one to verify and identify the nature of petition and land in reference therein and to be decided independently based on facts and circumstances as well as material on record therein, and the writ petitions pertaining to encroachment on the forest land only can be decided even prior to final adjudication and decision in present petition because allowing or disallowing of prayer made in this writ petition shall have no bearing on cases involving encroachment on forest land.

In aforesaid backdrop, as requested by the Court, learned Advocate General has placed on record list of 194 cases/petitions which according to the State, are related to the encroachment upon forest land.

The list is taken on record.

Without expressing any opinion on merit with respect to claim of the State as well as petitioners, we consider it appropriate to take up all matters in small batches for considering and adjudicating each and every case on the basis of material on record therein for passing appropriate order accordingly.

It would not be possible to adjudicate all cases in one go or in one day, therefore, Registry is directed to list cases from

Sl.No.1 to 32, of the list provided by learned Advocate General, on 18.07.2024, alongwith CWP No.1093 of 2016 as well as CWPIIL No.17 of 2014.

For the time being adjudication of present petition and other remaining petitions is deferred.

Office of learned Advocate General is directed to circulate the list submitted to the Court in the Bar by placing it on Notice Board of the Bar as well as Notice Board of the Court, so as to enable the respective learned counsel to appear in the Court.

List on 18.07.2024.

(Vivek Singh Thakur),
Judge.

(Bipin C. Negi),
Judge.

July 17, 2024.
(Purohit)