

CWP No. 1093 of 2016 a/w CMPMOs No. 503 & 504 of 2016 and COPC No. 161 of 2016.

CWPIL No. 17 of 2014, CWPIL Nos. 178 and 309 of 2017, CWPIL No. 19 of 2018, CWP No. 7341 of 2011 and CWP No. 1051 of 2014.

CWP No. 1301 of 2016 a/w CWPs No.1434, 1547, 1548, 1940, 2046, 2119, 2120, 2121, 2140, 2296, 2477, 2638, 2639, 2652, 2711, 2720, 2750, 2779, 2786, 2787, 2805, 2826, 2830, 2834, 2836, 2842, 2843, 2844, 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, 3089, 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 of 2017, 1051 of 2014, 1055 of 2018

1097, 1122, 1128, 116, 1341, 1348, 15, 158, 159, 1620, 173, 178, 179, 1784, 1795, 1801, 180, 181, 189, 190, 192, 195, 1947, 1973, 1974, 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, 272, 2718, 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, 894, 91, 92, 935 and 96 of 2017.

CWP No. 34 of 2018 a/w CWPs No. 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, 849, 850, 893, 908, 929, 976, 977, 999, 1055, 1063, 1064, 1067, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1103, 1104, 1137, 1192, 1194, 1195, 1197, 1200, 1205, 1267, 1268, 1322, 1333, 1410, 1533 of 2018.

20.7.2018 Present: Mr. J.L. Bhardwaj, Advocate as *Amicus Curiae* in CWPIL No. 17 of 2014.

M/s. G.D. Verma, R.K.Bawa, B.P. Sharma, B.S. Chauhan and O.P. Sharma, Sr. Advocates, with M/s Abhimanyu Rathore, Vinod Thakur, Guarav Gautam, V.D. Khidtta, Rajnish K. Lal., S.D. Gill, Vikrant Thakur, Naveen K. Dass, Ms. Ritika Kasav, C.N. Singh, Gaurav Gautam, L.S. Mehta, P.P. Chauhan, G.R. Palsra, Nitin Thakur, Neel Kamal Sood, Munish Datwalia, Abhilasha Kaundal, Vivek Sharma, B.N. Misra, Tek Chand Sharma, H. S. Rana, Mohan Singh, Suneet Goel, Ms. Parul Negi, O.P. Negi, Anil Chauhan, B.N. Mehta, L. S. Mehta, Surender Verma, Arun Kumar, Rohit Chauhan, Karan Singh Kanwar, Sunil Chauhan, C.S. Thakur, B.C. Verma, Jeevesh Sharma, Manohar Lal Sharma, Ansul Attri, Vinod K. Thakur, B.N. Sharma, Vishal Panwar, Vinod Chauhan, Ajay Kumar Dhiman, Neel Kamal Sharma, Sunil Chauhan, Digvijay Singh, K.B.Khajuria, Nitin Khanna, Sunil Kumar, Maan Singh, Naveen K. Bhardwaj, Jagdish Thakur, Tara Singh Chauhan, Sunil Mohan Goel, P.D. Nanda, Surinder Kumar Saklani, D.S. Kainthla, Mukesh Kumar, Mukul Sood & Het Ram Thakur, Vivek Darhel, Ajay Chauhan, Devender Chauhan Jaita, H.S. Rangra, Sanjay Kumar Sharma, G.K. Nada, J.L.Bhardwaj and Y.P.Sood, Ms. Archana Dutta, Advocates, for the petitioner(s) in the respective petitions.

Mr. Ashok Sharma, Advocate General with Ms. Ritta Goswami and Mr. Nand Lal Thakur, Additional Advocate Generals for respondents/ State.

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

Mr. Sanjeev Bhushan, Sr. Advocate, with Mr. Digvijay Singh, Advocate, for the applicants in CMP No. 6359 of 2016 in CWPIL No. 17 of 2014.

Mr. Ajay Kumar, Sr. Advocate, with Mr. Dheeraj K. Vashisht, Advocate, for the applicants in CMP No. 9153 of 2016 in CWPIL No. 17 of 2014.

Mr. Vikrant Thakur, Advocate, for the applicants in CMP No. 10019 of 2016 in CWPIL No. 17 of 2014.

Mr. N.K. Sood, Sr. Advocate, with Mr. Aman Sood, Advocate, in CWPII No. 178 of 2017.

Mr. Ankush Dass Sood, Senior Advocate, with Mr. Devinder Chauhan Jaita, Advocate, for the applicants/Interveners in CMP No. 3469 of 2018.

Learned Advocate General states that he is not satisfied with the affidavit, which was sought to be filed in Court today, as such, he prays for one week's time to comply with order dated 11.7.2018.

2. Mr. J.L. Bhardwaj, Advocate (Amicus Curiae) has handed over a letter, copy whereof is endorsed to him and also stands received by the learned Advocate General, contents whereof, *inter alia*, read as under:

"Your kind attention is brought to the fact that various orders have been passed regarding removal of encroachment from Govt. Land in Chaithla Village but the revenue and forest officials are hand in glove with the big encroachers and thereby helping the big encroachers and only small farmers are being targeted. No action has been taken against the following encroachers: -

1. Pratap Chauhan son Paras Ram.
2. Rajesh and Rajpal sons of Paras Ram.
3. Jagdish Tajta son of late Zalmu Ram.
4. Mast Ram Tajta son late Zalmu Ram.
5. Dinesh and Naresh both sons of Mast Ram.
6. Batya Devi wife of Mast Ram Tazta
7. Tara wife of Mohan Lal.
8. Sanjay son of Mohan Lal.
9. Leela Chauhan wife of Layak Ram.
10. Leela Devi d/o late Hiru Ram.
11. Virender Singh s/o late Bhagat Ram.
12. Pradeep and Pramod sons of Moti Ram.
All residents of Village Chaithla
13. Raj Ram s/o late Sita Ram Village Pungrish.

The persons mentioned at Sr. No.1 and 2 have their lands at Tehsil Jubbal, Tehsil Chopal and there is also huge encroachment at the said places. At village chaithla they have encroached more than 50 bighas of Govt. land but only eye wash has been done by cutting just 50 to 100 apple plants. Further, these persons also have packing and grading centre on the encroached land the plants were set up by obtaining subsidy from the Government. They have also constructed about 5 buildings at Shimla and the construction has been done from the money received from encroached land and they being influential persons there are building violations and no action is being taken by the authorities.

Person at sr. no 3 is facing FIR in encroachment case but no action has been taken against him for removal of apple tree at Village Chaithla and Village Klemu Kotkhai. He owns about 4 bighas of land at village klemu but has encroached about 40 bighas of govt. land. He has also taken land on lease at village Jalath Tehsil Kotkhai and there is also huge encroachment in the said orchard. In Chaithla he is having encroachment of more than 20 bighas of land.

Further, persons at Sr. no. 4 to 6 belong to one family and are taking the benefit of 5 bighas of encroached land have encroached about 60 bighas of forest land at village Chaithla. He has also managed to get govt. water supply through lift scheme to the encroached land and power supply also as the members of the family remained Pradhan of Gram Panchayat, Pandali three consecutive terms i.e. Prakash Chand, brother, Bimla Devi wife of Parkash Chand and Smt. Satya Tajta wife of his elder brother. The land about 2 kms away from the main village and in the middle of the forest and now these persons are managing construction of road through forest department to the said land.

The persons at Sr. 7 to 10 are big encroachers and not even a single tree has been cut from the said land and they are also taking the benefit of 5 bighas of encroached land under the policy.

The person at Sr. No. 11 is also big encroacher and is family member of the

persons at Sr. No. 3 to 6. He is also having encroached land at Pandali Chak and the revenue officials are not taking any action. He is also having more than 20 bighas of encroached land at Village Chaithla.

The persons at Sr. No. 12 is also encroacher and not even a single tree has been cut he is managing the affairs in connivance with revenue officials he is having encroached land of about 15 to 20 bighas.

The person at Sr. No. 13 was ordered to be evicted by revenue authorities but the orders are not being implemented and he is also a very influential person. There was an order passed by the civil judge Theog in shi favour but in collusion with the persecution department no further appeal was filed as the person dealing with the case was relative of this person.

Appropriate orders may be passed as no action has been taken since June, 2018 and intention of the encroachers is that they are able to pluck the aapple crop having worth of lacs of rupees.

The matter may be heard on day to day basis and the encroachers may be restrained from removing the crop. Only small officials are being deployed for removal/cutting trees and no higher officers Tehsildar and DFO are visitin the spot to oversee the entire process. The establishment is under the pressure of the big encroachers so that they are able to reap the present crop."

(Emphasis supplied)

3. Contents of letter, which are reproduced herein above, are reflective of a very sorry state-of-affairs of functioning of the officers/officials of the State, who despite assurance meted out to this Court, have really not taken any effective action against such of those persons, who have encroached upon large chunk of government land and more specifically in Villages Jalatha, Chaithla and Pungrish of Tehsil Kotkhai, District Shimla, Himachal Pradesh.

4. Vide para-9 of our order dated 25.4.2018, we had clarified as under:

“9. This Court has already clarified from time to time that the maximum of 5 bighas of encroached land would be calculated in such a manner that the total extent of the lawful ownership of the possessor and the land encroached upon does not exceed 10 bighas and the remaining land, if any, in possession shall be vacated by such possessor e.g. - if a person is lawful owner of 9 bighas of land and is found to have encroached upon 7 bighas of land, it would not mean that he is entitled to retain 5 bighas out of the aforesaid 7 bighas, but would be entitled to retain only 1 bigha so that his total holding does not exceed 10 bighas. Likewise, in a case where a person being lawful owner of 10 bighas of land is found to have encroached upon even one biswansi of land, even then he is liable to be evicted from one biswansi of land so as to ensure that his total holding does not exceed 10 bighas.”

5. We notice that despite the same, officials of the State are continuing to carry out operations only qua small farmers and no action is being taken against big encroachers. In fact on 11.7.2018, we had observed as under:

“On 21.6.2017, we had passed the following orders in CWP No. 1093 of 2016 and other connected matters:

“It is highly regrettable that despite repeated orders and severe indictment by this Court, the respondents have not cared to implement the same. This Court can only pass orders and it is for the respondents to obey or assail the same before the higher Court. If the orders are not assailed, then the respondents have no option but to obey such orders, both in letter and spirit.

2. Today, we were all prepared and set to take stringent action against the respondents but on the persuasive submissions made by the learned Advocate General, who has specifically assured this Court that he shall ensure that the orders passed by this Court are complied with in letter and spirit, we reluctantly adjourn the matter.

For compliance, list on 11.7.2018.”

Despite the same, to our utter dismay, we find that the State has not filed its response to the report of learned Amicus Curiae which was submitted in CWPII No. 17 of 2014 (pages 1487 to 1493).

Learned Amicus Curiae further states that now certain persons have directly contacted him and furnished him information with regard to the encroachments, large in scale, but in relation to whom, no action stands taken. The name of such persons are as under:

1. Bag Mal Rikhta, Ex-vice Pradhan, Village Badhal, Post Office, Dochi, Tehsil Jubbal, Distt. Shimla, H. P.
2. Rajesh Pirta, (Ex-Vice Pradhan), Village Badhal, Post Office, Dochi, Tehsil Jubbal, Distt. Shimla, H.P.

3. Mahender S/o Sh. Attar Singh (Present Pradhan), Village Badhol, Post Office, Dochi, Tehsil Jubbal, District Shimla, H.P.
4. Gulat Ram Jehte, S/o Sh. Tikkam Dass (Member), Village Badhal, Post Office, Dochi, Tehsil Jubbal, Distt. Shimla, H.P.
5. Lokender Singh S/o Sh. Amar Singh, Village Badhal, Post Office, Dochi, Tehsil Jubbal, Distt. Shimla, H.P. (B.O. in Forest Department, posted at Jubbal-Hatkoti Range).
6. Gita Ram Pirta Village Badhal, Post Office, Dochi, Tehsil Jubbal, District Shimla, H.P.
7. Chatter Singh Mehta R/o Village Badhal, Post Office, Dochi, Tehsil Jubbal, District Shimla, H.P.
8. Uddam Lal Chauhan Village Badhal, Post Office, Dochi, Tehsil Jubbal, District Shimla, H.P.

Mr. A.C.Sharma, PCCF, states that within next two days the factum of unauthorised encroachments of aforesaid persons shall be got verified and an appropriate action in terms of the earlier orders passed by this Court, shall positively be taken within one week thereafter.

Learned Advocate General again assures this Court of complying with the order dated 21.6.2018; file appropriate response to the affidavit filed by learned Amicus Curiae and take action for removing the trees of the encroachers referred to in earlier order passed by this Court. He further states that earlier orders passed by this Court, from time to time, in batch of these petitions, shall be implemented in letter and spirit within next one week. Ordered accordingly.”

6. Even today, what action stands taken against these eight persons referred to in the order, has yet not been disclosed.

7. Under these circumstances, we are of the considered view that interest of justice only warrants that

the SIT so constituted vide order dated 25.4.2018, shall on same/ similar terms, forthwith visit Villages Jalatha, Chaithla, Pungrish, as also village Pandali and Kalem (Tehsil Kotkhai), as referred to in the communication reproduced herein above as also Village Badhal, as referred to in our order dated 11.7.2018 and carry out operations for removing encroachments over public land, more specifically from the persons referred to in our order.

8. It is brought to our notice by Shri A.C. Sharma, Principal Chief Conservator of Forests (Management) Himachal Pradesh, that 125 personnel (approximately) are carrying out operations for removing encroachments. This in our considered view is highly inadequate number to meet out the enormity and the problem of huge encroachment of forest/ Government land.

9. We also notice that harvesting season is ongoing and the encroachers are now attempting to harvest the crop and market it for their pecuniary gains.

10. Considering the enormity and complexity of the problem, more so during the current harvesting season, we direct that the Eco Task Force, set up by the Indian Army for carrying out plantation work within the State of Himachal Pradesh, having its base at Kufri (Shimla), shall be deployed for implementing the orders passed by this Court and upholding the Rule of Law. Ordered accordingly. The *Jawans* of the said Force shall assist the members of the SIT in

addition to 125 personnel so deployed by the Forest Department for carrying out the operations. They shall work in tandem with the SIT, so as to ensure that every encroachment over forest/public land in the villages, referred to supra, is removed forthwith.

11. Registrar General of this Court is directed to forthwith get in touch with the Commanding Officer, 133rd Battalion, Eco Task Force (ETF), Kufri, Shimla.

12. In so far as crop standing on the trees is concerned, we leave it to the best of the judgment of the SIT/Commanding Officer of the Command/Battalion, to, if required, harvest and market the same, depending upon the existing conditions at the ground level.

13. Let action taken report be filed by the Chairman of the SIT on **24.7.2018**. Members of the SIT need not remain present, for they would be busy in the field and such report can be placed on record through the office of the learned Advocate General.

14. We also direct the Deputy Commissioner, Shimla to ensure that deployment of proper, efficient and effective staff, technical and non-technical, in assisting the members of SIT and Eco Task Force, for proper identification of land. Also, he shall render all assistant to the *Jawans* for lodging and boarding. The expenses incurred by the Eco Task Force shall be immediately reimbursed by the Deputy

Commissioner. Ultimately, who is to bear such expenses shall be decided by the Court lateron.

15. We also direct Mr. Nand Lal Thakur, learned Additional Advocate General to forthwith communicate this order to the members of the SIT and Commanding Officer for implementing the same in its letter and spirit. Order be communicated by all modes including telephone, fax, email etc.

List on **24.7.2018**.

Authenticated copy.

(Sanjay Karol)
Acting Chief Justice

(Sandeep Sharma)
Judge

July 20, 2018
(Vikrant/shankar)