

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 6655/2024

Ravi Todwal, S/o Shri Prabhu Dayal Todwal

-----Petitioner

Versus

State Of Rajasthan

-----Respondent

For Petitioner(s) : Mr. Ajay Pratap Singh with
Ms. Shubhi Gaur

For Respondent(s) : Mr. Shree Ram Dhakar, PP
Mr. Rishi Raj Singh Rathore, PP
Mr. Manvendra Singh Shekhawat, PP
with
Mr. Vijay Kumar Meena, Addl. S.P.,
Sawaimadhopur
Mr. Anoop Kumar, CCF, Ranthambore
Mr. Jagdish Arya, ADM,
Sawaimadhopur
Mr. Aman Singh
Mr. Gaurav Gupta

HON'BLE MR. JUSTICE SAMEER JAIN

Order

01/10/2024

1. The present petition is filed under the provisions of Section 528 of B.N.S.S., 2023, seeking directions from the Court qua the ongoing and upcoming illegal constructions/encroachment activities in Critical Tiger Habitat (CTH), Ranthambore Tiger Reserve, Sawaimadhopur, Rajasthan and non-action on behalf of the forest and police administration in this regard.
2. Learned counsel for the petitioner has submitted that the petitioner is a progressive citizen of this country, who has over the period noticed encroachment and illegal construction, that is carried out in the natural habitat of the extinct/endangered flora and fauna of the concerned area. It is further submitted that the

petitioner has also appraised the concerned authorities qua his concerns by way of a representation/complaint dated 18.09.2024 (Annexure-3).

3. Considering the averments made insofar and taking note of the alarming issue, this Court deemed it essential to interact (via V.C.) with the CCF, Ranthambore, Addl. S.P., Sawaimadhopur, office of the Collector, Sawaimadhopur on behalf of CCF. The officer has submitted that the ongoing encroachments and illegal constructions are carried out, in the critical zone of Ranthambore Tiger Reserve, which is an explicitly prohibited area and even falls under the definition of 'forest' as per the provisions of allied legal statutes. Moreover, certain complaints in this regard are even made by the concerned MLA of Sawaimadhopur. It is further submitted that the Hon'ble Apex Court in a catena of judgments, has time and again opined that no illegal constructions should be carried out in the prohibited areas. Moreover, specific prohibitions are spelled out qua the construction in the 1 km broad-line area of the reserved/national sanctuaries. Further, it is averred that in the matter in hand, gargantuan illegal construction is carried out within 1 km of broad-line, within the critical zone. At this juncture, the Officer has raised his apprehension qua the fact that the continuant illegal construction and encroachment is rendering devastating effects upon the flora and fauna (living organisms) of the said habitat. It is further averred that it is the duty of the State, to safeguard the natural habitat of all living organisms and the said creatures form a crucial part of the instant biosphere.

4. In support of the contentions made insofar, reliance is placed upon the ratio encapsulated in **T.N. Godavarman Thirumulpad vs Union of India** registered as **W.P. (Civil) No.202 of 1995**, and it is prayed that directions be given qua the respondent administration to register criminal complaint, without further ado, and conduct a fair, unbiased and expeditious investigation. Withal, it is also prayed that an interim protection/ stay/ status quo, on the ongoing illegal construction and encroachment be also granted, and requisite cooperation from the police authorities to the forest department be also tendered.

5. The concerned Officers have further appraised the Court with the fact that the Forest Department/ concerned officers are taking action as per the due procedure of law, nonetheless, due to lack of co-operation and assistance, from the administration and police authorities, on account of the wild scale protest by people, who are hundreds in number, appropriate measures qua attachment/seizure and withhold of property, are not efficaciously taken.

6. At this juncture, the Forest Officers have placed reliance upon Annexure-6 and have stated that the concerned department has abiding the due procedure of law, has furnished a representation before the SHO, Kundera, with a plea for prohibition of the ongoing illegal construction work. However, no heed is paid qua the same. It is further contended that the said construction from its face/structure appears to be of commercial nature.

7. At this stage, learned counsel for the petitioner has submitted that in the guise of development, certain farmhouse, agriculture constructions, temporary constructions, large scale hotels, Air-Bed and Breakfast(s) (AirBNBs) and institutional developments etc. are carried out. Moreover, it is pertinent to state that certain private farm-houses are also erected along-side the Delhi – Highway, defrauding and manipulating the revenue records.

8. Considering the foregoing facts and circumstances of the instant matter, scanning the records placed before this Court and taking special note of the contentions made by the learned counsel for the petitioner and the Officials (marked appearance via V.C.) specifically respondent no. 3, Annexure-6 i.e. the representation filed by the respondent no. 7, the appalling issue of the matter in hand and taking note of the Constitutional provisions as spelled out under Article 48A (protection and improvement of environment and safeguarding of forest and wild life) of the Constitution of India, and the ratio encapsulated in **T.N. Godavarman Thirumulpad (Supra)** this Court at this juncture, is of the view that immediate and effective actions are mandated. Therefore, CCF (respondent no. 3) is directed to take appropriate actions, strictly in accordance with law. The relevant extract from the afore-cited ratio is reproduced herein below:

"42. In our opinion, the Guidelines framed on 9th February 2011 appears to be reasonable and we accept the view of the Standing Committee that uniform Guidelines may not be possible in respect of each sanctuary or national parks for

*maintaining ESZ. **We are of the opinion, however, that a minimum width of 1 kilometre ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of the CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criteria also merits consideration.*** It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases.

43. Turning specifically to Jamua Ramgarh Sanctuary, the first report of the CEC proposed 100 metres as ESZ. In the second report, however, one kilometre width has been recommended for all protected forests falling under category 'B'. Having regard to its area, the said sanctuary comes in that category. In the order of this Court passed on 4th August 2006, the same margin, i.e. one kilometre as buffer zone has been prescribed. In the given facts concerning the Jamua Ramgarh Sanctuary, in our opinion the margin of 25 metres as contemplated in the 1994 Mineral Policy of the State of Rajasthan is grossly inadequate. We,

however, treat Jamua Ramgarh sanctuary as a special case for fixing the ESZ as in the past, the buffer zone varied from 25 metres to 100 metres. In our opinion, ESZ of 500 metres would be a reasonable buffer zone, within which subsisting activities which does not come within the prohibited list as per the Guidelines of 9th February 2011 could be carried on. But for commencing of any new activity which would be otherwise permissible, the ESZ norm of one kilometre shall be maintained for Jamua Ramgarh sanctuary.

44. We accordingly direct:-

(a) Each protected forest, that is national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9th February 2011 shall be strictly adhered to. For Jamua Ramgarh wildlife sanctuary, it shall be 500 metres so far as subsisting activities are concerned.

(b) In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained....."

9. This Court is also of the view that if the property and the said constructions are situated in the Critical Tiger Reserve or within the forest boundary, should be seized and attached pronto. Status quo be maintained.

10. Police authorities are directed to render absolute cooperation to the officiating forest authorities. It is made clear that any sort of non-cooperation on part of the police authorities ought to be brought before the notice/knowledge of this Court, by way of appropriate course/application.

11. Director General of Police is directed to supervise the instant matter.

12. Office of Collector/ concerned Executive Magistrate is also directed to provide downright co-operation.

At this stage, this Court also deems it apposite to jot down the malapropos behavior of Shri Jagdish Arya, ADM. During the course of arguments and hearing, it is observed that the said officer paid no attention to the proceedings of the Court and was engaged in his personal work.

13. Chief Secretary, Rajasthan is directed to issue necessary directions regarding the Court room ethics, decorum and mechanism that is expected, from the Officers marking presence, to abide with.

14. Considering the writ large repercussions of the issue in hand, this Court deems it essential to appoint Shri Karan Tibrewal, as Court Commissioner/ *amicus curiae* qua the instant matter. It is expected that Mr. Tibrewal shall furnish a report and provide requisite assistance qua the issue in hand, status of the said

construction in the afore-stated area, relevant provisions of law and suitable procedure to be adopted to resolve the same. CCF administration and police authorities are directed to render due assistance to the Court Commissioner.

15. Registrar (Judicial) is directed to send a copy of this order to the Court Commissioner (*Amicus Curiae*).

16. CCF & Field Director, Ranthambore Tiger Reserve, Sawaimadhopur, Rajasthan (respondent no.3) is directed to pay a sum of Rs. 1 lakh (Rupees One Lac Only) as professional fees to Mr. Tibrewal.

17. List the matter on 17.10.2024, for further consideration.

18. Name of Shri Karan Tibrewal be reflected in the cause list as Court Commissioner qua the instant matter.

19. The Superintendent of Police and all concerned officers are directed to mark presence in the Court or appear via V.C. on the next date of hearing.

20. In the meantime, requisites be carried out.

(SAMEER JAIN),J