

ITEM NO.1

COURT NO.1

SECTION PIL

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

I.A.Nos. 2, 27, 34, 81, 38-40, 41, 43-45, 46-47, 51, 48-50, 58-60, 52, 95, 99, 36, 54, 75,
78, 79, 67, 76, 80, 83-84, 89, 90, 92, 37

WITH

91, 96-97, 98, 100, 101, 103, 104-105, 106 AND 107

IN

WRIT PETITION (CIVIL) NO(s). 337 OF 1995

CENTRE FOR ENVIR. LAW, WWF-I

Petitioner(s)

VERSUS

U O I & ORS

Respondent(s)

(For modification/amendment of the Court's Order dt. 22.8.97, exempt. from filing O.T., direction/modification of Order dt.13.11.2000, recommendations of CEC in IA.No.67, direction, restoration and modification and for permission to lay pipeline under the Swarg Ashram Laxman Jhula Water Supply Scheme, condonation of delay and for impleadment and for permission to have the BML-HANSI BRANCH-BATANA BRANCH MULTIPURPOSE LINK CHANNEL through the 4.9 Acres of land and for bringing on record the addl. facts, directions and with Office Report)

Date: 14/11/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE J.M. PANCHAL

For Petitioner(s)/ Mr. Raj Panjwani, Adv.
Applicant/ Mr. Vijay Panjwani, Adv.
Respondent(s) Mr. M.N. Krishnamani, Sr. Adv.
Mr. Krishan Mahajan, Adv.

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Mrs. Ranik Chhabra, Adv.

Mr. Vinod a. Bobde, Sr. Adv.
Mr. K.K. Lahiri, Adv.
Mr. Ejaz Maqbool, Adv.
Mr. Vikash Singh, Adv.
Ms. Taruna Singh, Adv.
Mr. Abhijeet Sinha, Adv.
Mr. Kesav Mohan, Adv.

Mr. Vikas Singh, ASG.
Mr. T.S. Doabia, Sr. Adv.
Ms. Kiran Bhardwaj, Adv.
Mr. D.S. Mahra, Adv.

Mr. R.K. Rathore, AAG, Pb.

Mr. M.K. Verma, Adv.
Mr. A.K. Sinha, Adv.

Mr. N.M. Sharma, Adv.
Mr. R.P. Singh, Adv.

Mr. V.G. Pragasam, Adv.
Mr. S. Joseph Aristotle, Adv.
Mr. S. Prabu Ramasubramanian, Adv.

Mr. Sanjay R. Hegde, Adv.
Mr. Amit Kr. Chawla, Adv.

Mr. Manjit Singh, AAG, Haryana
Mr. Harikesh Singh, Adv.
For Mr. T.V. George, Adv.

Ms. Suparan Srivastava, Adv.
Mr. Rahul Srivastava, Adv.
Mr. Rajesh Srivastava, Adv.

Mr. Aruneshwar Gupta, Adv.
Mr. Naveen Kumar Singh, Adv.
Mr. Mukul Sood, Adv.
Mr. Shashwat Gupta, Adv.

Mr. Shail Kr. Dwivedi, Adv.
Mr. SWA. Qadri, Adv.
Mr. Manoj Kumar Dwivedi, Adv.
Ms. Vibha Dwivedi, Adv.
Ms. Vandana Mishra, Adv.

Mr. Biswanath Aggarwalla, Adv.
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Mr. Rajiv Mehta, Adv.
Mr. A. Henry, Adv.

Mr. Amit Mishra, Adv.
Ms. Vibha Datta Makhija, Adv

Ms. A.Subhashini, Adv

Mrs. Rachana Joshi Issar, Adv

Mr. Bhavani Shankar Gadnis, Adv.
Mrs. B. Sunita Rao, Adv.
Mr. Shanti Bhusan Chaubey, Adv.

Mr. Anil Shrivastav, Adv.
Mr. Ritu Raj, Adv.

Mr. A. Mariarp;utham, Adv.
Ms. Aruna Mathur, Adv.
For Arputham Aruna & Co., Advs.

Mr. J.S. Attri, Adv

Mr. Ranjan Mukherjee, Adv
Mr. S.C. Ghosh, Adv.

Mr. Riku Sarma, Adv.
For M/S Corporate Law Group, Adv

Mr. Gopal Singh, Adv.
Mr. Anand Prakash, Adv.
Mr. Rituraj Biswas, Adv.

Mr. S. Wasim A. Qadri, Adv.

Mr. D.S. Mahra, Adv.

Mr. U. Hazarika, Adv.

Mr. Satya Mitra, Adv.

Ms. Sunita Hazarika, Adv.

Mr. Ashok K. Srivastava, Adv.

Mr. Ashok Mathur, Adv.

Mr. Anis Suhrawardy, Adv.

Mr. Ajit Pudussery, Adv.

Mr. B.B. Singh, Adv.

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Mr. D.N. Goburdhan, Adv.

Mr. G. Prakash, Adv.

Ms. Hemantika Wahi, Adv.

Ms. Pinky Behera, Adv.

Ms. Shivangi, Adv.

Ms. Sangeeta Singh, Adv.

Ms. Kamini Jaiswal, Adv.

Mr. M. Veerappa, Adv.

Mr. P. Parmeswaran, Adv.

Mr. Pradeep Misra, Adv.

Mr. Rajesh Prasad Singh, Adv.

Mr. K.N. Madhusoodhanan, Adv.

Mr. R. Sathish, Adv.

Mr. Kuldip Singh, Adv.

Mr. RK. Pandey, Adv.

Mr. Sanjay Katyal, Adv.

Mr. R.S. Suri, Adv.

Mr. Rajeev Kumar Sharma, Adv.

Ms. Sushma Suri, Adv.

Mrs. Lalita Kaushik, Adv.

Mr. K.R. Sasiprabhu, Adv.

Mr. Jana Kalyan Das, Adv.

Mr. Annam D.N. Rao, Adv.

Mr. Niraj Sharma, Adv.

Mr. Subramonium Prasad, Adv.

Mr. Vishwajit Singh, Adv.

Mr. Shankar Divate, Adv.

Ms. Rachana Srivastava, Adv.

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Mr. Noorullah, Adv.

Ms. Kavita Wadia ,Adv

Ms. Anitha Shenoy ,Adv

Mr. Amit Kumar ,Adv

Mr. Ravindra Keshavrao Adsure ,Adv

Mr. S.S. Shinde, Adv.
For Mr. V.N. Raghupathy, Adv.

Mr. Ameet Singh, Adv.
Mr. Praveen Swarup, Adv.

Ms. Asha G. Nair, Adv.

Mr. Mohd. Fuzail Khan, Adv.
Mr. Kamendra Mishra, Adv.
Mr. Anil Kumar Jha, Adv.

UPON hearing counsel the Court made the following
ORDER

I.A.No.2 :

The State Governments have issued several notifications declaring their intention to constitute sanctuaries in certain areas under Section 18 of the Wild Life (Protection) Act, 1972. But we are informed that final declarations have not been made under Section 26A of the Act declaring such areas as sanctuaries. Before making such final declaration, the Act contemplates several acts such as issuing proclamations (Section 21), inquiry by Collector and admission or rejection of claims (Sections 22 to 24) and acquisition of lands/rights (Section 25 and 25A). The question of rehabilitation of large number of people residing within the Sanctuaries is also a serious issue to be tackled before a final declaration is made under Section 26A of the Act. The State Governments have referred to various problems and the lack of sufficient funds for implementing the provisions and have sought allocation of funds from the Union Government. We feel that this question may also be examined by the National Board for Wild Life ('NBWL') for short), headed by the Prime Minister. The Director of Wild Life Preservation, who is the Member Secretary of the National Board for Wild Life is directed to file a Report before this Court within eight weeks about the action to be taken for completing the requirements of Chapter IV of the Act. The State Government may also endeavour to complete the proceedings under Section 24 of the Act, without delay.

IA No.37 :

The National Board for Wild Life had cleared a project permitting Uttaranchal Jal Vidyut Nigam Ltd. to draw 25 kilometer of transmission line from Jauljibi to Dharchula in the Askote Wild Life Sanctuary in the State of Uttaranchal. Such clearance is subject to some conditions. It appears that while executing the work Uttaranchal Jal Vidyut Nigam has not complied with all the conditions. The Deputy Director General, Wild Life had inspected the site and noted the violations committed by the Vidyut Jal Nigam. MOEF shall make available a copy of the report of the Deputy Director General. National Board for Wild Life will consider the same and submit its views to this Court, for passing further orders in the matter. Adjourned by six weeks.

IA Nos.38-40 (with IAs.48 to 50) :

An extent of two acres of forest land with the Rajaji National Park (Gohari Range, Vidasini Block) was originally leased on 29.7.1959 to the
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Kailash Anand Mission Trust for a period of 30 years, the constructing a nature cure clinic and allied Buildings. The lease period expired in 1989. The Trust had made an application to renew the lease, as the lease deed provides for two renewals for 30 years each. The Trust also filed this application for grant of permission for renewal of the lease for the next 30 years. The Deputy Inspector General (Wild Life), Government of India, Ministry of Environment and Forests, has filed an application in the month of November, 2007, to the effect that the Standing Committee of National Board of Wildlife has recommended the rejection of the application of the Trust for renewal of the lease on the ground that the Trust has felled number of trees without permission.

As the Standing Committee of National Board of Wildlife has considered the application and recommended rejection, on the facts and circumstances, we reject these applications (IAs.38-40).

Kailash Anand Mission Trust have also filed IAs. 48 to 50, seeking permission for grant of renewal of three leases of forest land relating to supply of water to the Nature Cure Clinic and to repair the water tank and also to repair the pipelines laid through Rajaji National Park. As the Trust's prayer for renewal of lease of two acres of Forest Land has been rejected, the prayer

for consequential permission for renewal of leases for water supply area and permission to repairing the water line etc., have become infructuous. Consequently, IAs. 48 to 50 are also rejected.

It is however made clear that if the State Government decides that the Trust is entitled for renewal, this Order will not come in the way of State Government submitting a proposal to the Central Government along with the recommendation of Chief Wild Life Warden or other appropriate forest authority, as stated in the affidavit filed by the MOEF in July, 2007.

IA Nos.43 to 45, 81 and 99 :

The applicant Swamy Shankardas claims to be the disciple of one 'Tat Wale Baba'. He has alleged that nine natural caves in area No.4, Vidasini, Gotri Range, in Rajaji National Park, collectively called as 'Bhootnath Gufa' was used by Tat Wale Baba and later by his disciples including the applicant for leading their life of meditation and yoga. The said caves also contain the Samadhi of Tat Wale Baba. The said caves were sealed on 29.11.2003, to prevent non-forest activities. The prayer in the application is to permit the applicant to have access to the Samadhi and permit him to stay in the caves and maintain the Samadhi and perform routine poojas.

According to the State of Uttaranchal and the Ministry of Environment and Forests, the caves - 'Bhootnath Gufa' are situated within the Rajaji National Park, to which the provisions of the Wild Life (Protection) Act, 1972 applies. It is also alleged that the applicant erected certain structures within the cave and has been holding Bhandara for the visitors. It is stated that the caves have been attracting a large number of visitors and the non-forest activities interfere with nature wild life and pose a threat to the National Park. It is contended that the applicant was in illegal possession and as the encroached area has been restored to the National park, the Standing Committee has rejected his applications.

Section 27 of the Wild Life (Protection) Act, 1972 provides that no person (other than those mentioned therein) shall enter or reside in the sanctuary except under and in accordance with the conditions of a permit granted under Section 28. Section 30 of the Act provides that no person shall set fire to a sanctuary, or kindle fire, or leave any fire burning in a sanctuary,

in such a manner as to endanger such sanctuary. Section 33 provides that the Chief Wild Life Warden shall be the authority who shall control, manage and maintain the sanctuary.

The learned counsel for the applicant submitted that the applicant has been enjoying certain rights prior to the declaration of the area as Wild Life Sanctuary and has been living as one with nature and has no other abode. Any right or privilege claimed by the applicant has to be determined in accordance with the provisions of the Act. Section 22 provides for inquiry by Collector into any claim and Section 24 relates to acquisition of rights as per orders passed by the Collector.

The applicant would, therefore, be at liberty to make an application under the Act for admission of the rights and privileges claimed by him to enter the sanctuary or to do or perform any act within the sanctuary. The authority may also consider whether the caves which have been sealed, should be opened for giving access to the applicant, in accordance with the provisions of the Act. IAs. 43-45, 81 and 99 are disposed of accordingly.

IA No.54 :

The State of Maharashtra proposes to regularize the 'Eksali' leases of adivasis in respect of an extent of 707.64 hectares of land within Kalsubai H. Sanctuary and Great Indian Bustard Sanctuary. The report of CEC has been received.

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We direct the State Government to submit a proposal in this regard to the National Board for Wild Life along with the Opinion of the Chief Wild Life Warden, Maharashtra within two weeks. NBWL may examine the same and submit a report within a period of 8 weeks thereafter.

IA Nos.67 and 76 :

IA No. 67 has been submitted in connection with construction of an irrigation dam in Krishna Valley of Bhim Shanker Wildlife Sanctuary in the district of Pune, by the State of Maharashtra. The matter was referred to CEC who report is numbered as IA 76. The matter has already been referred to the NBWL on 28.3.2007 and its report is awaited. The State Government is directed to submit its proposal in this behalf to the National Board for Wild

Life within two weeks which may submit its report to this Court within eight weeks thereafter.

IA Nos.83 to 85 :

It is stated that the applicant was given 3 1/8 acres of land in Tanda Block Forest, Haldwani, District Nainital in lieu of earlier occupied forest land. The CEC has reported that the allotment requires to be considered by the Forest Advisory Committee.

The applicant is permitted to submit his application before the Forest Advisory Committee for regularization within four weeks. The Committee, after considering the application shall file a report before this Court within six weeks thereafter. Status quo as on today shall be maintained till the decision of the Advisory Committee.

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IA No.90 :

In view of the report of the National Board for Wild Life, the prayer of the State of Uttaranchal seeking permission to construct 27 km. road through Govind Vihar Wild Life Sanctuary (involving dereservation of forest land) is rejected.

IA Nos.36,75 and 89 :

Place before the Forest Bench of this Court.

IA Nos.78 & 79 :

The applicants seek two weeks' time to file response to the report of NBWL. Time granted as prayed, finally.

IA No.80 :

The petitioner is permitted to withdraw the application (seeking permission to lay a pipeline in Rajaji Nation Park), with liberty to move a fresh application with appropriate charges.

IA No.92 :

This application by State of Madhya Pradesh is ordered to be brought up along with IA No.2. In the meanwhile, MOEF and NBWL to file their

response.

IA Nos.96,97 and 100 :

Post these IAs. on 30th November, 2007.

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IA No.98 :

IA No. 98 by State of MP (seeking exemption from filing official translation of documents filed with additional affidavit) is allowed.

IA Nos.101, 103 to 107 :

Issue notice to the State of Uttaranchal. The applications are referred to National Board for Wild Life for its recommendation.

Rest of the IAs.

The other IAs. to come up on 30.11.2007.

(R.K. DHAWAN)
VERMA)
COURT MASTER

(S.THAPAR)
PS TO REGISTRAR

(VEERA
COURT MASTER