

ITEM NO.45

COURT NO.5

SECTION PIL

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A No(s).499-500 in WRIT PETITION (CIVIL) NO(s). 13381 OF 1984

M.C. MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for impleadment, direction on behalf of National
Highways Authority of India with office report)

Date: 07/05/2014 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. P.S. Narasimha, Sr. Adv. (A.C.)

Mr. M.C. Mehta
(Petitioner-In-Person)

For Respondent(s) Ms. Indu Malhotra, Sr. Adv. (Applicant-NHAI)
Mr. Tavinder Sidhu, Adv.
Ms. Gunjan S. Jain, Adv.
For M/s. M.V. Kini Associates

Mr. Gaurav Bhatia, AAG (Uttar Pradesh)
Ms. Vimla Sinha, Adv.
Mr. Abhishek Chaudhary, Adv.

Mr. Vijay Panjwani, Adv. (CPCB)
Ms. Madhur Panjwani, Adv.

Mr. A.D.N. Rao, Adv. (CEC)
Mr. Sudipto Sircar, Adv.
Mr. Annam Venkatesh, Adv.
Ms. Vaishali R., Adv.
Ms. S. Neelam Jain, Adv.

Mr. Pradeep Misra, Adv. (UPPCB)
Mr. Suraj Singh, Adv.

Mr. J.S. Attri, Adv.
Mr. Shashank Bajpai, Adv.
Ms. Richa Pandey, Adv.
Mr. R.K. Rathore, Adv.

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Mr. S.S. Rawat, Adv.
Mr. D.S. Mahra, Adv.

Mr. S. Wasim A. Qadri, Adv.
Mr. L.R. Singh, Adv.
Mr. Mahmood Umer, Adv.
Mr. Tamim Qadri, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard.

At the oral request made by Ms. Indu Malhotra, learned senior counsel appearing for the applicant-National Highways Authority of India (NHAI), the applicant is permitted to amend I.A.No.500 of 2012 so as to include a prayer for diversion of 6.19 hectares of protected forest land in District Firozabad falling in Taj Trapezium Zone (TTZ).

This application (I.A No.500 of 2012) filed by NHAI seeks permission to divert 6.8138 hectares of protected forest land (0.6238 hectares in the District of Agra and 6.19 hectares in the District of Firozabad) falling in Taj Trapezium Zone (TTZ) for and in connection with the execution of what is described as "Golden Quadrilateral Project (GQ) involving rehabilitation, upgradation and widening of National Highway-2 between Agra to Etawah bypass including Firozabad-Agra bypass in the State of Uttar Pradesh. The applicant also prays for permission to fell and remove 3847 trees of different species falling in Taj Trapezium Zone (TTZ) in the State of Uttar Pradesh. The execution of the project, mentioned above, involves use of the extent of forest land, indicated above, and the

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cutting of trees for a satisfactory completion of the work.

When the matter initially came up for hearing before us on 25th November, 2013, we had requested the Central Empowered Committee (CEC) to examine the matter and submit its report and recommendations. The CEC has, pursuant to the said order, submitted a report on 25th March, 2014, from a reading whereof it appears that the CEC has found the execution of the project work to be in public interest with no feasible/viable alternatives. It is also reported that environmental clearance for the project and "In Principle Approval" has been granted by the Ministry of Environment and Forest under the Forest (Conservation) Act, 1980 for

the diversion of the forest land. The CEC has, therefore, recommended that this Court could permit felling of 3205 trees from the forest land and 642 trees from the non-forest land falling in Taj Trapezium Zone (TTZ) in the Districts of Agra and Firozabad for the purpose of widening of NH-2 between 199.660 Kms. to 252.000 Kms. subject to the following conditions:

- "(i) for non-forest use of the forest land formal approval under the Forest (Conservation) Act, 1980 will be obtained;
- (ii) the Net Present Value (NPV) for the forest land diverted will be deposited in the Compensatory Afforestation Fund;
- (iii) for felling of 642 trees on private land in District Firozabad the requisite permission⁴ under the U.P. Protection of Trees Act, 1976 will be obtained;
- (iv) plantation of 23960 trees, in lieu of 3847 trees that would be felled, will be undertaken at the project cost; and
- (v) wherever technically feasible the trees, instead of felling, will be trans-located."

Mr. M.C. Mehta, petitioner appearing in-person, and Mr. Vijay Panjwani, learned counsel appearing for Central Pollution Control Board, however, argued while the permission prayed by the applicant could be granted to be applicant in view of the importance of the project being executed by it, compliance with directions relating to plantation of 23960 trees in lieu of 3847 trees being felled in connection with the project need to be ensured. It was also submitted that experience in the past has shown that while trees are felled on the condition that compulsory afforestation shall be undertaken by the project

proponent but not much in reality is done on the ground, leaving the compulsory afforestation programme unattended. It is submitted that the plantation of 23960 trees in lieu of the trees that are sought to be felled by the applicant-NHAI would require space and identification of suitable areas for such plantation which aspect can be dealt with only by the State of Uttar Pradesh. It was urged that appropriate directions need to be issued to the State of

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Uttar Pradesh to undertake an exercise for identifying the area where such afforestation can be undertaken which effort ought to be closely monitored by this Court.

Mr. Gaurav Bhatia, learned Additional Advocate General appearing for the State of Uttar Pradesh, submits that the State of Uttar Pradesh will locate a suitable area for plantation of trees in lieu of trees that are being felled in connection with the project and the Chief Conservator, Government of Uttar Pradesh, would within such time as may be fixed by this Court submit a report as to the extent and location of the area where such plantation activity can be carried out. It is also submitted that while the NHAI could be directed to deposit the amount involved in the proposed afforestation and plantation work, the determination of the amount shall have to be left to be competent authority. He urged that the competent authority would also within such time as may be granted for the purpose determine and report the total extent of expenditure involved in the proposed afforestation programme.

In the circumstances, therefore, we see no impediment in allowing the application (I.A.No.500 of 2012) filed by the National Highways Authority of India and permitting the applicant to use by diversion 6.8138 hectares of protected forest land (0.6238 hectares in the District Agra and 6.1900 hectares in the District

Firozabad) in connection with the project, mentioned
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earlier. We also see no reason to decline permission to the applicant-NHAI to fell and remove 3847 trees, mentioned in the CEC report, in connection with the said project subject to the conditions which the CEC has stipulated and which we have extracted in the foregoing part of this order.

We further direct that the State of Uttar Pradesh shall prepare at an appropriate level a report, identifying the area where the plantation of 23960 trees could be undertaken in lieu of the trees felled in connection with the above project. We direct the competent authority to determine the expenditure involved in the plantation of the said number of trees which amount shall be deposited by the applicant with the authority to be nominated by the State Government in its report. The needful shall be done by the State Government and the competent authority within a period of six weeks.

With the above directions, we allow the application (I.A.No.500 of 2012) for Direction as also application (I.A.No.499 of 2012) for impleadment, filed by the National Highways Authority of India and direct that the reports which the State Government and the competent authority would file shall be put up separately before the Court for orders, as and when the same are filed.

(Mahabir Singh)
Court Master

(Saroj Saini)
Court Master