

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**ORIGINAL APPLICATION NO. 167 OF 2018
EARLIER OA NO. 99 OF 2017 (CZ)**

IN THE MATTER OF:

1. Pathranand,

the disciple of :

Swami Bajranand Ji Maharaj,
Age- 38 years, R/o Paramhans Aashram
Village – Vinega, Post – Katthsmil,
Tehshil and District – Shivpuri, MP

.....**Applicant**

Versus

1. State of Madhya Pradesh,

Through its Principal Secretary,
Department of Forest,
Vallab Bhawan, Bhopal, M.P. 462004

2. District Collector,

District Shivpuri, M.P - 473551

3. Mukhya Karya Palan Officer, Janpad

Panchayat, Shivpuri, M.P. 473551

4. Van Sanrakshak,

Van Mandal Smany
Shivpuri, District Shivpuri, M.P.- 473551

5. Jila Sanyojak Aadim Jati Kalyan Vibhag

Shivpuri, District Shivpuri,
M.P. – 473551

6. Ministry of Environment,

Forest and Climate Change (MoEF &CC)

Govt. of India, Indira Paryavaran Bhavan,
Jorbagh, Road, New Delhi-110003

.....**Respondents**

COUNSEL FOR APPLICANT:

Mr. Pradeep Mishra with Mr. Daleep Dhyani, Advs.

COUNSEL FOR RESPONDENTS:

Mr. V. K. Shukla and Mr. Vijayalakshmi, Advs. for State of Madhya Pradesh

Mr. Rajesh K. Singh and Mr. Rovins Verma, Advs. for MoEF

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)

Reserved on: 11th February, 2019
Pronounced on: 15th February, 2019

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

Dr. S.S. GARBYAL, (EXPERT MEMBER)

1. In this Application, the applicant has alleged that the Respondents are constructing houses under Pradhan Mantri Awas Yojna in forest area without seeking approval of MoEF&CC in accordance with Forest (Conservation) Act, 1980 in Samanya Van Mandal Shivpuri, District Shivpuri, M.P. The applicant has prayed that all constructions raised be removed and to restore forest land to its original nature.
2. On 01.11.2017 the Central Zonal Bench at Bhopal, where this matter was earlier heard, had passed following orders:-

We have perused the material on record, including the previous order sheets of the proceeding of the case, held so far. Till now the main contention between the parties had been with regard to status of the site in question and whether any construction has been raised or not. In this regard applications had been filed subsequently, giving specific names of the persons who are said to have raised construction during the pendency of this Original Application. It is also revealed from the record that Learned Counsel for Respondent had given verbal undertaking before the Tribunal that no construction shall be raised. The allegation of the applicant is that despite of the said undertaking the construction is continuing to be raised. As the pleadings had been completed it was also suggested that matter may be finally heard. However, the matter could not be finally taken up, till date.

In view of the aforesaid facts and circumstances and dispute between the parties, we deem it proper that before proceeding to hear the matter finally it would be appropriate to know and have a report of status of the site in question on record, through a Commissioner appointed by the Tribunal. Therefore, we make a request to Shri Dharamvir Sharma, Learned Advocate to be a Court Commissioner who shall visit the site immediately and submit a report along with coloured photographs to the Tribunal, at the earliest.

3. The report of the Court Commissioner was filed on 13.11.2017 wherein following observations were made:-

- 1. There were around 20-25 old hutments and about 25 under constructed houses found in the Village Binega. It was seen that, people were living in few under constructed houses which are said to be constructed under the Pradhan Mantri Grameen Awas Yojna.**
- 2. The Commission found there is no construction work is being carried out at present at the alleged site.**

- 3. The Few constructed houses were found at plinth and pillars level and few were found with brick works also but without concrete roof. It was seen that, some family residing by covering the roof with Tripals and some other plastic cover.**
- 4. It is observed while enquiring locals that these constructions were stopped for the last 3-4 months. However, near few houses I found construction material lying unused since long. Though, no cement concrete houses were found to be fully completed except one Anganbadi building in the village which is established for the welfare of the villagers.**
- 5. It is also reported by few adivasis (tribals) of this village that, the construction were stopped after receiving a notice to the hitgrahees from Gram Panchayat - Chandanpura, Shivpuri
Dated 18.06.2017.**

Thereafter the Tribunal had on 15.11.2017 ordered that status quo, as it exists, will be maintained.

4. The Respondent State had in their reply filed on 11.07.2017, stated as follows:-

- 1. That in the forest compartment No. 969 which is adjacent to village to Vinega there are about 63 traditional scheduled tribe community families who are residing there for many decades and generations. Mostly these families are homeless having Kachcha Jhopadis and therefore after coming into being the Scheduled Tribes and other Traditional Forest Dweller (Recognition of Forest Rights) Act, 2006, it was decided that these families may be helped under the Pradhan Mantri Awas Yojna for providing them at least one room (with kitchen & bathroom) shelters so as to make their lives little better.**
- 2. That a survey of the area was conducted by the Respondent No. 3 and it was decided that 29 rooms (with kitchen & bathroom) for 29**

beneficiaries under the Pradhan Mantri Awas Yojna shall be constructed for the benefits of the Scheduled Tribe community members.

- 3. That thereafter about 72 persons of Tribe community applied for forest rights under the Act and which was duly considered by the 3 committees at the village level, sub division level and finally at district level.**
- 4. That Section 3(1) (a) of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, provides that forest rights of forest dwelling to Schedule Tribes and other Traditional Forest Dwellers can be given.**

“Section 3(1) for the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely-

- (a) Right to hold and live in the forest land under the individual or common occupation for habitation or for self -cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes or other traditional forest dwellers.**
- 5. That the constructions in question which are being raised in the forest area are one room (with kitchen & bathroom) dwelling units being given to the Adiwasari Community (Schedule Tribe) living there in the forest for decades after decades and generations under Pradhan Mantri Awas Yojna.**

- 5. The State Respondents have further submitted that:-**

12. That on 02.05.2016, the respondent No. 4 wrote a letter to the respondent No. 3 that any construction in the Forest Area would be in violation of Forest Conservation Act, 1980 and orders of the Hon'ble Supreme Court and therefore, no construction under Pradhan Mantri Awas Yojna can be allowed in the forest area.

13. That no construction for the benefit of any other community or persons of Scheduled

Tribe Community is being carried out under Pradhan Mantri Awas Yojna, except those who are entitled to be given under the Act. Therefore, there is no illegality in the construction of one room (with kitchen & bathroom) houses under Pradhan Mantri Awas Yojna, which is the basic requirement and need for the poor Tribe Community living there homeless for very long time.

14. That as per provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 the members of Scheduled Tribe Community are entitled to have Forest Rights in their favour and the residential unit can be constructed for homeless Scheduled Tribe Community persons who are residing there from generations.

6. The State Respondents have, however, not submitted any records to show that the person who are constructing their houses or on whose behalf the houses are being constructed have been conferred any rights over the forest land in question, in terms of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It is clear from the report of the Court Commissioner that some of the houses were already in existence as he had stated that “*there are around 20-25 old hutments and about 25 under constructed house found in the village Binega.*”

7. From a document which was placed on record by the applicant on 14.11.2017, it appears that the Forest Range Officer of the Shivpuri Forest Range had written to Collector, Shivpuri and also District Convenor, Aadim Jati Kalyan Vibhag, Dist. Shivpuri that in respect of individual claims raised under Forest Compartment 969, by mistake a wrong compartment number has been put in place of CN969 and as

a result of which some persons already having personal properties and houses, have raised constructed. Therefore, the Forest Range Officer had asked that the individual Forest rights letter be not distributed, re-inspection be done as per rules and “*the Forest enjoyment right*” letters issued be abrogated.

8. In an additional affidavit filed on 15.05.2018 by the Divisional Forest Officer, Shivpuri, on behalf of State Respondent No. 1 to 5, it has been submitted as follows:-

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- 3. That before filing the present OA before this Hon'ble Tribunal the petitioner had filed WP No. 2245/2017 before the Hon'ble High Court of MP at Gwalior Bench. The Petitioner pleaded for action over representation of the petitioner and to stop the illegal construction.**
- 4. Hon'ble Court disposed the writ petition vide order dated 07.04.2017 with a direction to respondent No. 4 (Van Sanrakshak Shivpuri Division) that if the petitioner files the certified copy of the order along with representation within 7 days the Van Sanrakshak Shivpuri will pass a speaking order within a period of 30 days.**
- 5. That the respondent No. 4 received representation with letter No. 17 dated 10.04.2017 which was given to Sub Divisional Officer Forest, Shivpuri by letter No./Court/2017/2181 dated 01.05.2017 for submitting detailed report.**
- 6. That, the Sub Divisional Officer Forest, Shivpuri submitted his report to Van Sanrakshak Shivpuri Division by letter No. 548 dated 05.06.2017. There after respondent No. 4 passed speaking order by letter no/Court/2017/2550 dated 18.05.2017.**

7. That, the Gram Panchayat Chandanpura, Shivpuri has applied for the Forest rights. Thereafter construction permission was granted to 29 villagers to construct Pakka Houses under Pradhan Mantri Aawas Yojna and first instalment was sanctioned to be received on or before 10.01.2017.
8. That, Van Sanrakshak Shivpuri issue a letter No/DM/2017/2205 dated 02.05.2017 to CEO Janpad Panchayat Shivpuri to stop the construction under Pradhanmantri Aawas Yojna and to demolish the structure in view of the order of Hon'ble Supreme Court case No. 202/95 dated 12.12.1996.
9. That, Meeting of District Level Forest Right Committee was held on 22.06.2017 in which the documents received from Block Level Committee dated 19.06.2017 with the recommendation of the Sub Division Level Forest Rights Committee, out of 63 of the total application for the forest rights was received, 34 claims were found fit for individual forest rights. Thereafter forest rights claims were granted on the date of 22.06.2017 and dated 28.06.2017.
10. That, Respondent No. 4 has issued a letter No. 4509 dated 29.08.2017 to Collector, Shivpuri, and Jila Sanyojak Adim Jati Kalyan Vibhag Shivpuri for the due negligence caused in serving and issuing of Van Adhikar Patra as the applicants were residing in compartment No. 969 while the Van Adhikar Patra was issued in Compartment No. 996 and 37.

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9. The Divisional Forest Officer has further submitted that:-

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13. That during the investigation on the complaints, the investigation team, found that in the name of community forest rights, applicant has encroached upon approximately 11.5 Hectares of Reserve Forest and Revenue Land and have raised illegal constructions and raised boundary wall. The said land was given for community rights for community use, as

mentioned in Samudaik Van Adhikar Patra 05.05.2015.

14. That thereafter on 02.11.2017 the Forest Department has registered a POR (Preliminary Offence Report) No. 1675/20 dated 02.11.2017 against the applicant for encroachment upon approximately 11.5 Hectares of Land. A copy of the POR dated 02.11.2017 is annexed as Annexure: R/2.

15. That, District Level Meeting of Forest Right Committee was held on 20.04.2018 in which the decision was taken to correct the 34 individual Van Adhikar Patra which was reported earlier by Forest Department by letter No. 4509 dated 29.08.2017 and to issue show cause notice to Gram Panchayat Chandanpura, Shivpuri and Swami Bajranand Ji Maharaj.

16. Thereafter on 25.04.2018 the Collector Shivpuri has issued a show-cause notice to the applicant and Gram Sabha Chandanpura to show cause within 15 days, as why the Samudaik Van Adhikar Patra 05.05.2015 may not be cancelled. A copy of show-cause notice dated 25.04.2018 is annexed herewith and marked as Annexure: R/3.

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10. It is clear from the documents on record and submissions made by the parties that the land in question is forest land and no non-forestry activity could be undertaken on this land without following the provisions of Forest (Conservation) Act, 1980. It is also an admitted fact that at the time of construction of houses on the forest land in question there were neither any forest rights conferred upon the people on the forest land in question nor was any prior approval of Ministry of Environment and Forest (MoEF) obtained, in accordance with the provision of the Forest (Conservation) Act, 1980. It was only on 20.04.2018 that the decision was taken to correct

the 34 individual Van Adhikar Patra out of 63 applications received for the forest rights. In fact the orders of the Competent Authority regarding conferment of Forest Rights to the eligible individuals have not been placed before the Tribunal.

11. In view of the facts and circumstances stated above, we are of the considered opinion that at the time of construction of houses, there was no right conferred upon the persons who are constructing or on whose behalf buildings are being constructed in the forest land in question. Therefore, there has been violation of the Forest (Conservation) Act, 1980 and the houses which are being constructed or already constructed are illegal. We accordingly direct the State Authorities to initiate action for removal of construction and restore the forest land to its original nature.

With these directions, this OA is disposed of, without any cost.

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Satyawan Singh Garbyal
(Expert Member)

Dated: 15th February, 2019
New Delhi