

**THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

ON THE 11TH DAY OF JANUARY, 2021

BEFORE:

HON'BLE SHRI JUSTICE RAGHVENDRA SINGH
CHAUHAN, C.J.

AND

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI, J.

WRIT PETITION (PIL) NO. 05 OF 2021

BETWEEN:

Reena Paul (Female) aged about 57 years, W/o Mr. Vijendra Paul, R/o 115, Rana Enclave, Near Shanshahi Ashram, Rajpur, Dehradun, Rajpur, Uttarakhand 248009

.....Petitioner.

(By Shri Abhijay Negi, Advocate)

AND:

State of Uttarakhand through Principal Secretary, Forests and Environment, Government of Uttarakhand, Civil Secretariat, Dehradun & others
.....Respondents.

(By S.N. Babulkar, learned Advocate General with Mr. C.S. Rawat, learned C.S.C. for the State).

ORDER

I.A. No. 2 of 2021 has been filed by the petitioner for staying the Government Order, dated 08.01.2021, issued by the State Government de-notifying the Shivalik Elephant Reserve Area.

2. Mr. Abhijay Negi, the learned counsel for the petitioner, submits that, the State of Uttarakhand happens to be the western most part of the country, which houses and preserves the wild elephants. These elephants happen to be large migratory animals, who tend to migrate between India and Nepal. Hence, they require a large area for their survival and propagation. Keeping in mind the especial needs of the elephants, keeping in mind the need to protect and promote the wildlife of the State, on 28.10.2002, the Shivalik Elephant Reserve was notified, as an Elephant Reserve, by the Government of Uttarakhand. The notification was issued after obtaining the permission from the Central Government. According to the Notification dated 28.10.2002, the total area was of 5405.07 square kilometers. The total area was a forest land. The core area includes the entire area of the Rajaji National Park, Corbett National Park and Sona Nadi Wild Life Vihar. Even the buffer area was clearly described in the notification.

3. However, after the lapse of 18 years and, after having preserved the lives of the elephants, on 24.12.2020, the State Wild Life Board, the respondent no. 3, recommended to the State Government that the Shivalik Elephant Reserve should be de-notified as a Reserve. Aggrieved by the recommendation dated 24.12.2020, the petitioner had challenged the same before this Court. By order dated 08.01.2021, this Court had stayed the recommendation dated 24.12.2020.

4. Notwithstanding the stay granted by this Court, on 08.01.2021, the Government has notified the de-reservation of the Shivalik Elephant Reserve. Thus, the present (I.A. No. 2 of 2021) seeking the stay of the said notification.

5. The learned counsel further submits that, according to Section 2 of the Forest Conservation Act, 1980, no State Government is permitted to de-reserve any reserve area, without seeking the permission of the Central Government. However, in the present case, no such permission has been sought, and no such permission has been granted by the Central Government. And yet, on 08.01.2021, the Government has de-notified the reserve area. Thus, according to the learned counsel, the said Government Order *per-se*, is violative of Section 2 of the Forest Conservation Act, 1980.

6. Moreover, a proposal was sent by the State Government to the Ministry of Environment, Forest and Climate Change ('the Central Ministry' for short), wherein the State Government had sought the approval of the Central Government. However, by letter dated 09.10.2020, written by the Assistant Inspector General of Forest to the Additional Secretary (Forest), Uttarakhand Forest Department, the Central Ministry had raised certain concerns and had sought for certain clarification before the proposal submitted by the State would be accepted by the Central Government and before any permission would be given. Therefore, obviously, till the relevant

information sought by the Central Ministry is submitted by the State Government, no permission has been granted by the Central Government, as required by Section 2 of the Forest Conservation Act, 1980. Therefore, according to the learned counsel, the impugned Notification dated 08.01.2021 needs to be stayed by this Court.

7. Mr. S.N. Babulkar, the learned Advocate General, submits that although, in the present I.A., a prayer has been made for staying the notification dated 08.01.2021, but the said notification has not been challenged in the writ petition. In fact, there is no prayer that the said notification should be quashed by this Court. However, in all frankness and fairness, the learned Advocate General admits that, according to Section 2 of the Forest (Conservation) Act, no notification can be issued by the State Government, without prior permission of the Central Government. The learned Advocate General further admits that, according to Section 2 of the Forest (Conservation) Act, no notification can be issued by the State Government, without prior permission of the Central Government. Furthermore, the learned Advocate General is not in a position to produce any permission given by the Central Government to the State Government for de-notifying the reserved area. Moreover, the learned Advocate General is not in a position to inform this Court, whether the letter dated 09.10.2020 has been complied with by the State Government or not, and whether the information, so sought by the Central Ministry, has been furnished to the Central Ministry or not? He, therefore, seeks time for filing the reply before this Court.

8. In rejoinder, Mr. Negi, the learned counsel for the petitioner submits that since the notification dated 08.01.2021 has been issued after the filing of the writ petition, the said notification could not be challenged in the writ petition. Therefore, the learned counsel for the petitioner seeks time to amend the writ petition for challenging the legality of the notification dated 08.01.2021. Simultaneously, the learned counsel submits that, if notification dated 08.01.2021 were not stayed promptly by this Court, it may cause irreparable loss to the ecology, environment, and to the lives of the wild elephants, who continue to enjoy the protection and conservation of the Shivalik Elephant Reserve. Hence, it is imperative for this Court to step in and to control the damage that may be caused both to the wild life and to the environment.

9. Heard the learned counsel for the parties.

10. Section 2 of the Forest (Conservation) Act reads as under:

"2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.— Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing,—

- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;*
- (ii) that any forest land or any portion thereof may be used for any non-forest purpose;*

- (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
- (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.]

[Explanation.-For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;
- (b) any purpose other than reafforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.]"

11. A bare perusal of this Section clearly reveals that neither State, nor any authority is permitted to de-notify a reserved area or forest area, or to permit the use of the area for non-forest purposes until and unless the prior permission of the Central Government is granted. However, so far, there is not a single piece of evidence to show that the Central Government has granted the permission to the State Government to de-notify the Shivalik Elephant Reserve.

12. The letter dated 09.10.2020 is reproduced below:

"Government of India
Ministry of Environment, Forest and Climate Change

(Forest Conservation Division)

Indira ParyavaranBhawan,

JorBaghRaod, Aliganj

New Delhi – 110003

Dated: 9th October, 2020

To

The Addl. Secretary (Forest)
Uttarakhand Forest Department
Government of Uttarakhand
Dehradun

Sub: Proposal for seeking prior approval of the Central Government under Forest (Conservation) Act, 1980 for non-forestry use of 87.0815 ha of forest land for "Expansion of the Jolly Grant Airport" under Forest Division and District Dehradun of the State of Uttarakhand (Online Proposal No. FP/UK/Others/44884/2020)

Sir,

I am directed to refer to online proposal No. FP/UK/Others/44884/2020 dated 08.09.2020 received from the State Government of Uttarakhand for obtaining prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980 regarding above mentioned subject. After scrutiny of the proposal the Ministry revealed to submit the following certain information/documents/justification related to the proposal from the State Government of Uttarakhand:

1. The area proposed for diversion falls under High Conservation Value area and also that will cause fragmentation of the riverside forests which is situated between the existing runway and the river. Out of the 87.0185 ha proposed area to be diverted 47.0 ha area falls under MDF. Therefore the State Govt, may explore alternatives for the proposal such as acquiring area lying north of the existing runway.
2. As per DSS analysis the entire proposed forest area for diversion falls within the Shivalik Elephant Reserve and elephant corridors within its 1 km radius. Moreover, the notified Kansaro-Barkot Elephant Corridor is located within 5km radius. The State Government should consider avoiding these sensitive areas and explore alternative lands.
3. Proposed forest land is located within 10 km radius of Rajaji National Park/Tiger Reserve. Therefore, status of the Wildlife Clearance/comments of Chief Wildlife Warden and NTCA may be furnished.
4. PDF file namely "DM's Letter for non availability of Civil Soyam Land for CA" as uploaded under column 13 (v) of Part-II is not accessible. Moreover, it is to inform that, certificate from Chief Secretary of the State for non-availability of the non-forest land for CA is required.
5. CA scheme is given for only 5 years. As per the FCA, 1980 Comprehensive Guidelines para 2.8 (ii) (e) detailed work schedule including year wise operations, soil & moisture conservation, regeneration cleaning, silvicultural and other activities as prescribed in the working plan, species to be planted, including maintenance for 10 years and annual total costs in conformity with cost norms of the State/UT

needs to be taken up. Accordingly CA scheme including maintenance for 10 years be submitted.

6. The Ministry had accorded approval for EXTENSION OF JOLLY GRANT AIR STRIP for use of 82.15 hectare forest land on 17.02.2003. The User Agency has not submitted details of old proposal in the online application part-I column B (B-1).
7. Whether any approval for expansion/any other activity related to Jolly Grant Airport given by RO Dehradun/Lucknow?
8. The status of the compliance report of the previous approval dated 17.02.2003 is required.
9. KML file of the already diverted forest land be provided.
10. Details of the employment generation may be uploaded in PARIVESH portal.
11. Undertaking to bear the cost of CA, NPV and Addl. NPV is not given.
12. Approved muck disposal plan be submitted.
13. Brief details of the activity proposed on 49.6725 ha.
14. Forest type (as per Champion & Seth classification) present in the proposed area of diversion may be provided.

Yours faithfully,

Sd/-

(Sandeep Sharma)

Assistant Inspector General of Forests."

13. A bare perusal of the letter clearly reveals that the Central Ministry has clearly pointed out that the proposed diversion falls under '*High Conservation Value Area*'. Furthermore, such a proposed diversion will cause further fragmentation and would reduce the area for the elephants. Therefore, the Central Ministry itself has suggested that other alternatives be explored for extension of the Jolly Grant Airport. Moreover, the Central Government has clearly pointed out that the diversion area falls within the one kilometer radius of the Shivalik Elephant Reserve. Further, it falls within five kilometer radius of the notified Kansaro-Barkot Elephant Corridor. The Central Ministry has further sought for certain information, such as, the C.A. Scheme, such as, the compliance report of the previous approval dated 17.02.2003, such as the comments of the Chief Wild Life Warden and NTCA. However, it is presently unclear, whether these relevant information and

others have been submitted to the Central Ministry or not.

14. Since there is no evidence to show that the Central Government has given its consent for diverting the reserve area, *prima facie*, the notification dated 08.01.2021 is *per-se* in violation of Section 2 of the Forest (Conservation) Act, 1980. Thus, the petitioner has a strong *prima facie* case in her favour.

15. The petitioner has also raised an arguable case, where the issues involved would be with regard to the legality of the recommendation dated 24.12.2020, and the notification dated 08.01.2021. Another issue would deal with the preservation and conservation of wild life as warranted by Article 48-A of the Constitution of India. Moreover, the issue would be how to ensure a sustainable development of the State, while keeping in mind the required development of the State on one hand, and the preservation and conservation of fragile ecological areas of the State for the protection of our wildlife. Therefore, the balance of convenience is also in favour of the petitioner.

16. Lastly, if, the notification were permitted to operate and, in case, the proposed area is diverted for the purpose of expansion of the Airport, an irrevocable loss would be caused, both to environment, and to the elephant population. Moreover, the irrevocable loss would be caused at the

cost of violation of Section 2 of the Forest (Conservation) Act.

17. Therefore, as the three requirements for grant of stay, in favour of the petitioner, do exist, this Court stays the operation of Notification dated 08.01.2021, till the next date.

18. Learned counsel for the petitioner is granted four weeks' time to amend the writ petition, and for challenging the legality of notification dated 08.01.2021.

19. The learned Advocate General seeks four weeks' time to file counter affidavit. The time, so sought for, is hereby granted.

20. List this case on 03.03.2021.

(Raghvendra Singh Chauhan, C.J.)

(Manoj Kumar Tiwari, J.)

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