

(Girwai Laghu Udyog Vs. National Board for Wild Life & Ors.)

Gwalior: 10.12.2018

Per Justice Vivek Agarwal

Shri Prashant Sharma, learned counsel for the petitioner.

Shri Praveen Newaskar, learned Govt. Advocate for respondents No.2 to 7/State.

Shri Tej Singh Mahadik, learned counsel for respondent No.9.

Shri Narottam Sharma, learned counsel for respondent No.11.

Shri S.P.Jain, learned counsel for respondent No.18.

This writ petition has been filed by petitioner- Girwai Laghu Udyog Sanchalak Kalyan Kari Sangh through its president claiming following reliefs:-

“1) This Hon'ble Court may kindly be pleased to allow the petition and an order may kindly be given to the respondent authorities to permit the petitioner association to work properly and start renewing the licenses, issuing NOCs and any other departmental co-operation which should be extended to the petitioner association.

1A.) Notification dated Annexure P/6 passed under Section 18 of the Wild Life (Protection) Act 1972 may kindly be quashed or be clarified that it does not effect the rights of the petitioner.

2.) This Hon'ble Court may kindly be pleased to direct the respondents authorities to let the petitioners run their business without any hindrance.

3.)The respondent authorities may kindly be directed not to take any coercive action against the petitioner association without providing due opportunity of hearing.

4.) Any other relief, which this Hon'ble Court deems fit in the facts and circumstances may also kindly be granted.

5.) Cost of the petition may kindly be awarded.”

2. It is contention of learned counsel for the petitioner that its members are running industrial units at Girwai area which is part

of Gwalior district and the show-cause notice, which has been issued to it and its members by the Conservator of Forest and Ex Officio Divisional Forest Officer, General Forest Division, Gwalior, on 11.2.2010 as contained in Annexure P/7, asking them to furnish documents regarding construction and possession and present their side of the case on 6th March, 2010, is arbitrary and illegal inasmuch as members of the petitioner-association are having annual turn over of more than Rs.1,000/- crore and are contributing to the economic well being of the country besides providing employment to several persons.

3. Learned counsel for the petitioner submits that members of petitioner-association had purchased properties at Girwai and Raipur situated on the main highway NH-3 vide certain sale-deeds enclosed by them as Annexure P/4 collectively. It is submitted that since then after obtaining NOCs, and permission from various departments including Gram Panchayat they have established their industry and copies of such licences, permissions and NOCs have been filed as Annexure P/5 collectively. It is also submitted that they had obtained loans and electricity connection from the M.P. State Electricity Board.

4. It is pointed out that State Government issued a notification dated 21st May, 1981 for establishment of (Hukna) Great Indian Bustard and other animals and birds in the said sanctuary and after issuance of such notification as contained in Annexure P/6 all the lands for the purpose of establishment of factories by the respective members were purchased and they have established their small industry in the region. It is further submitted that after lapse of more than 30 years from issuance of notification this show-cause notice has been issued by the Conservator of Forest which is against the provisions of Wild Life Act. It is submitted that population of Girwai and Raipur village is more than 60,000 and there are several restaurants, hotels, educational colleges and

other resourceful establishments within the periphery of 10 kms, thus, exercise of powers is ruthless and arbitrary. It is also submitted that since entire area is having local residence and is not a safe place for sanctuary, therefore, limits of Son Chiraiya sanctuary needs to be restricted and this averment finds echo in the amended relief inserted vide amendment allowed on 28.11.2013 as relief 1A reproduced above.

5. Learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in the case of **Pradeep Krishen vs. Union of India (UOI) and Ors** as reported in **AIR 1996 SC 2040** wherein challenge in a PIL was to the order permitting collection of Tendu leaves from forests by State as that would lead to depletion of vegetation and consequent shrinkage of required area of forest. It was alleged that State overlooked concern for forest wealth in issuing such order. It is pointed out that the Supreme Court had directed State Government to notify areas of sanctuaries and national park within period of 6 months as is evident from the recitals in para 18 of the said judgment. It is also submitted that in fact it has been discussed in para 4 and 5 of the said judgment that the Chief Conservator of Forests (Production), Government of M.P., who had filed a counter affidavit, had contended that no fundamental right of the petitioner is involved, and therefore, petition was not maintainable under Article 32 of the Constitution. Similarly, it was contended that though State Government vide order dated September, 16, 1982 forbade collection of minor forest produce from the Sanctuaries in the year 1982-83, it did permit collection of certain minor forest produce like Honey, Tamarind, Mango, Mahul leaves, Mahul flowers etc., by the tribals for their bona fide use. Vide order dated September 1, 1983, and subsequent order dated May 7, 1990 it also permitted collection of Tendu leaves, etc., from the Sanctuaries. It has also been discussed that said deponent had

stated in his affidavit that 11 national parks and 33 sanctuaries in the State of M.P. are located, out of which 3 national parks were finally notified under the National Park Act, 1955 and one sanctuary is notified under the Act as amended in 1991 but the final notification for remaining 8 national parks and 32 sanctuaries notified from time to time under the Act prior to its amendment in 1991 is yet to be finalized. It has also come on record that in these national parks and sanctuaries proceedings under Sections 19 and 25 of the Act were not taken to acquire the rights of the people. That is why they were not finally notified. It was also stated that State Government could not have taken away the rights of the tribals and villagers dependent on minor forest produce without acquisition of those rights after payment of compensation. It is for this reason that the final notification under Section 26 A could not be issued unless provision for payment of compensation and rehabilitation were simultaneously made. Placing reliance on such judgment of the Supreme Court, it is submitted that since there is no final notification, the members of the petitioner-association cannot be prohibited from pursuing their livelihood for which they have established their units after taking due permission from various authorities.

6. Learned counsel for the petitioner also submits that Municipal Corporation of Gwalior has notified Girwai as ward No.65, and therefore, now since it is a part of urban population, therefore, it cannot be included in the area carved out for Great Indian Bustard sanctuary.

7. Learned counsel for the State on the other hand submits that after publication of notification under Section 18 of the Wild Life (Protection) Act, 1972 (hereinafter shall be referred to as "the Act of 1972") Collector had issued a proclamation on 10.9.1996 and invited objections from the residents of the villages which are coming within the boundary of the sanctuary. After receiving such

objections they have been decided and a decision was taken not to remove the villagers from their land and permit them to continue their agricultural work/ activities. As the forest department in its letter dated 5.7.1997 contended that the Great Indian Bustard (Son Chiraiya) breeds in the area of agricultural land, therefore, there is no question of removing the villagers from the sanctuary area and villagers can continue their agricultural activities and can live within the area of sanctuaries, therefore, an order under Section 24(2)(c) was passed on 30.11.1998, copy of which is enclosed as Annexure R/2 with the return. In this order, names of 29 villages including Girwai and Raipur are mentioned.

8. It is also submitted that there is bar to accrual of rights after issuance of a notification under Section 18(1) of the Act of 1972. Section 18 of the Act of 1972 reads as under :-

“18. Declaration of Sanctuary.(1) The State Government may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural, or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment.

(2) The notification referred to in sub-section (1) shall specify, as nearly as possible, the situation and limits of such area.

Explanation. -For the purposes of this section it shall be sufficient to describe the area by roads, rivers, ridges, or other well-known or readily intelligible boundaries.”

It is submitted that since notification under Section 18(1) was issued on 21st May, 1981, therefore, any right acquired after this date is clearly forbidden. Section 19 provides for the Collector to determine rights after issuance of notification under Section 18 and Section 20 deals with bar of accrual of rights after issue of a

notification under Section 18 except by succession, testamentary or intestate. Section 21 deals with issuance of proclamation by Collector; Section 22 deals with inquiry by Collector; Section 23 deals with powers of Collector and Section 24 with acquisition of rights. Clause (b) of sub-section (2) of Section 24 reads as under :-

“24. Acquisition of rights.-

(2) If such claim is admitted in whole or in part, the Collector may either-

(a)---

(b) proceed to acquire such land or rights, except where by an agreement between the owner of such land or holder of rights and the Government, the owner or holder of such rights has agreed to surrender his rights to the Government, in or over such land, and on payment of such compensation, as is provided in the Land Acquisition Act, 1894 (1 of 1894).

(c)---”

As is apparent from the above reproduction of clause (b) of Section 24, the Collector has right to acquire such land or rights and then how acquisition is to be made is provided under Section 25.

9. As discussed above, in the present case, since State Government has decided not to acquire the land of agriculturist/farmers as Great Indian Bustard thrives into such environmental ambience to grow and survive and has permitted the farmers to continue their agricultural operations and stay there, therefore, contention of learned counsel for the petitioner that without there being any acquisition, sanctuary could not have come into existence is devoid of merit.

10. Petitioner's reliance on the judgment of Supreme Court in the case of **Pradeep Krishen (supra)** is also not of much significance inasmuch as sub-section 2 of Section 25A provides that the notification shall not lapse if, for any reasons, the

proceedings are not completed within a period of two years. In the present case, since a decision has been taken not to acquire the land from the agriculturists and notification has been issued by the competent authority i.e. the SDO vide order dated 30th November, 1998 determining 29 villages which shall form part of the geographical boundaries notified on 21st May, 1981 showing total area of the sanctuary to be 512 sq. km consisting of an area of 307.49 sq. km as reserved forests and 19.84 sq. km as PF (perennial forest). The boundaries of the sanctuary are as under :-

“North-District Morena boundary
East-Cut line inside compartment No.359 and 360
up to Tighra Dam, Tighra Gwalior, P.W.D. Road up
to Agra-Bombay Road.
Sought- Agra-Bombay road up to Ghatigaon
West- Ghatigaon-Basota Forest Road.”

11. At this stage, learned counsel for the petitioner submits that he has filed I.A.No.5693/2018 on 12.11.2018 seeking amendment in the writ petition and thereby claiming following additional reliefs in the light of the fact that one Shri Gyandeep Sharma has filed a PIL W.P.No.15058/2018(PIL) on the basis of notification dated 13.12.2016 issued by the Ministry of Environment, Forest and Climate Change seeking therein direction to remove all illegal industries established within the limits of 100 meter to 2 kms of Ghatigaon, Hukna wild life sanctuary in the following terms :-

“6) If may kindly be declare that the lands of the petitioner do not fall within the boundaries of the Ghatigaon Hukna (Great Indian Bustard) Wildlife Sanctuary.

7) The respondents may kindly be directed not to interfere with the smooth functioning to the industries and business of the petitioner.

8) The respondents may kindly be directed to grant/renew all the requisite permissions/ no-objection certificates to the petitioners for continuous establishment and smooth running of the industries of the petitioners.

9) It may kindly be declared that the show cause notices Annexure P/7 issued by the D.F.O. is illegal and issued without jurisdiction and quash the same.”

It is pointed out that land of the members of petitioner/association was included in the limits of Municipal Corporation, Gwalior, vide notification dated 6th November, 2012 in exercise of the powers conferred under Section 405 (3) of the M.P. Municipal Corporation Act, 1956 and Girwai finds mention at serial No.29 of said notification.

12. We reject this application for amendment at the outset for the reason that effect of inclusion of an area within the limits of the city under Section 405 has been defined in Section 406 and the total impact will be that the provisions of the Municipal Act shall apply as far as municipal or local self Government is concerned. It has nothing to do with the provisions of the Wild Life Act. Similarly, since petitioners are not having locus to challenge the notification under Section 18 or subsequent determination by the SDO vide Annexure R/2 incorporating 29 villages within the boundaries of proposed sanctuary being subsequent, purchasers of the land, who had admittedly purchased the land for establishment of industrial unit vide sale-deeds dated 30th October, 2001, 16th September, 2004, 15th September, 2004, 7th July, 2004, 29th August, 2001, 17th August, 2005, 15th July, 2005, 28th September, 2006 and 1st July, 2006 respectively filed collectively as Annexure P/4, have no locus inasmuch as provisions of Section 20 of the Act of 1972 had come into effect and there could not have been any accrual of rights except by succession, testamentary and intestate and admittedly vide sale-deeds which are on record and have been collectively filed, rights have been acquired through sale of property, therefore, there being a specific bar, no rights could have accrued in favour of the petitioner, and therefore, any subsequent notification whether to

bring the area within municipal limits or otherwise will be of no avail. As far as petitioner's contention that there is no notification under Section 26 A of the Wild Life (Protection) Act, 1972 is concerned, this is not an issue which can be raised by the petitioner in terms of there being a bar of accrual of rights and petitioner being not an affected party. Such objection can be raised by only those who are not affected by provisions of Section 20 of the Act of 1972.

13. At this stage, learned counsel for the petitioner prays for withdrawal of the writ petition which too we decline to grant for the reasons that in a writ petition under Article 226, this Court has vide enough powers to decide and conclusively determine the rights of the parties and once these rights have been determined after hearing the counsel for the interesting parties at length, then permitting withdrawal of the writ petition will not be in the interest of public cause as that may lead to multiplicity of litigation, and therefore, it is more appropriate to determine the controversy on the basis of legal provisions as they exist, rather than leaving a loose link requiring the effected parties to live in a illusionary dilemma as to the extant of their rights, least the fundamental rights. As discussed above, petitioner being subsequent purchasers after issuance of notification under Section 18 of the Wild Life (Protection) Act, 1972 has no locus.

With the aforesaid, this petition is dismissed.

(Sanjay Yadav)
Judge

(Vivek Agarwal)
Judge

ms/-