

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

**Original Application No. 488(THC) of 2014
(M.A. No.1085 of 2015)**

And

Original Application No. 170 of 2015

IN THE MATTER OF:

Court on Its Own Motion

Versus

State of Himachal Pradesh

Through its Secretary, Department of Forest, Shimla-171002

And

Preminder Kaur

Versus

1. Amrik Singh Nagpal

S/o Sh. Harbhajan Singh Nagpal
R/o House No. 3008, Sector 35-D,
Police Station, Sector 36, Chandigarh

Also at:

Village and Post Office Baluana, Tehsil Abohar
District Firojpur

2. Praveen Sharma

S/o Late Sh. Jai Ram Sharma
R/o Village Bhumti, Tehsil Arki,
Dist Solan

Amicus Curiae in O.A No. 488(THC) of 2014 :

Mr. Ritwick Dutta, Adv

Counsel for Applicant in O.A No. 170 of 2015:

Mr. Mandeep Singh Vinaik, Adv.

Counsel for Respondents in both Applications:

Mr. Aditya Dhawan, Ms. Kiran Dhawan for respondent no.1
Mr. Shrawan Dogra, A.G, Mr. D.K Thakur DAG and Mrs. Seema
Sharma, DAG for State of Himachal Pradesh
Mr. Harish Khanna, Adv.

JUDGEMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 31st January, 2017

Pronounced on: 1st August, 2017

- 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?**

RAGHUVENDRA S. RATHORE, J (JUDICIAL MEMBER)

1. While sitting in Circuit Bench at Shimla, the Tribunal came across a newspaper report published by The Tribune on 20.11.2014 that 200 trees have been cut near Tara Devi Temple. The trees were of Deodar and Oak and were on a private property adjoining to Tara Devi temple. Further, it was reported in the newspaper that cutting of the trees was without prior permission of the authorities. The forest department had not taken notice of it, much less to say, an appropriate actions. An apprehension was expressed in the newspaper report that the number of trees may be even more.
2. The news came as a shock and it was decided by the Tribunal to take up the matter *suo moto* on that very day i.e 20.11.2014. Accordingly, the Registry was directed to register a case, as per the NGT Rules. Notice was issued to the State of Himachal Pradesh. The Learned Additional Advocate General for State of Himachal Pradesh who was

present before the Tribunal, accepted the notice and sought time to seek instructions and to file reply. Notices were also issued to all the private owners on whose land the trees are said to have been cut. The State Government/Forest Department was directed to examine the matter and to serve notices on all the private owners of the land, who were to remain present before the Tribunal on the next date, which was fixed as 8th January, 2015.

3. Subsequently, on 19.05.2015, Mrs. Preminder Kaur had also filed an application under Section 14,15 and 18 (1) of the National Green Tribunal Act, 2010, in respect of the same incident of felling of trees situated in the land near Tara Devi temple, Shimla. As owner of the land, she had prayed before the Tribunal to direct the respondents to pay her compensation of Rs. 1 Crore for damaging the property. Further, she has prayed that an order for restitution of the damaged property may be passed and cost of proceedings be also awarded to her. Notices in the said Original Application were issued to the respondents on 25.05.2015. Thereafter, the matter was connected with O.A No. 488/2014 which also relates to the same subject matter. Therefore, proceedings in both the cases were ordered to be taken up together.

Brief Facts

4. In furtherance to the aforesaid notices issued by the Tribunal and on receipt of response to it, the facts revealed

are that in all 477 trees of Deodar, Oak and other broad leaf species had been felled from the private land adjoining to the forest turf near Tara Devi temple, in Shoghi Tehsil. The trees felled from Government land are also included in this. As the entire activity was unauthorized and illegal, an FIR came to be registered at the concerned Police Station on 21.11.2014 and the investigation commenced. Thereafter, nearly 82.5 M³ Oak wood was recovered and some part of it was said to have been burnt. Looking to the seriousness of the matter, the Block Forest Officer, Shoghi; Forest Guard In charge, Pateod Beat; Range Officer, Mashobra; Assistant Conservator of Forest, Shimla Division and the Divisional Forest Officer, Shimla were placed under suspension by Government of Himachal Pradesh.

5. It was informed by the counsel appearing for the State, upon instruction of the officer present before the Tribunal, that the value of felling/cutting of trees i.e. 477 was roughly estimated to be of 35 lakhs. The owner of the land is Mrs. Preminder Kaur. The Forest Department had taken the number of the trees by counting their stumps. Mrs. Preminder Kaur had entered into an Agreement for Sale, on 12.09.2014, with one Pristine Hotel and Resort Pvt. Ltd, through its Director Mr. Amrik Singh Nagpal for transferring and handing over the possession of the entire land of 38.5 bigas for a total sum of Rs. 16 Crores. At the time of execution of the agreement, the owner had received

Rs. 3 Crores as part payment/earnest money through cheque dated 12.09.2014 and cash of rupees 5 Lakhs. Rupees 3 crores was paid on the date of agreement by two post-dated cheques, which have already been encashed.

6. In the present transaction permission was required from various authorities, including under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. It is alleged that Mr. Nagpal had submitted an application to the authorities concerned after forging the signature of the owner. It was said to have been done without her consent and authority. Subsequently, the owner left for Gurgaon on 14.09.2014 and returned only in the first week of December, 2014 when she was called for interrogation by the Police. As per the owner, the trees were in existence when she left for Gurgaon and two of her servants were living in the house which was very much in the area in question. The possession of the land was not handed over to the purchaser. One Mr. Praveen Sharma is said to have signed the application for demarcation as well as the damage report, who was known to Mr. Nagpal and not to the owner.

7. The pages of the agreement were typed on different computers and it nowhere mentions that there had been large number of trees existing on the land in question. It does not also mention that prior permission was required to be taken, if the trees were to be cut down.

8. The Tribunal had then issued notices to Mr. Amrik Singh Nagpal and Mr. Praveen Sharma, to be present before the Tribunal. They were to be informed by the SHO concerned. Mrs. Preminder Kaur, the owner of the land, was directed to deposit an amount of Rs. 20 lakhs initially as part payment, within one week, as damages on account of reforestation and restoration of environment and ecology. The said amount was to be deposited with District Forest Officer, Rural, Shimla and was made subject to the final orders that may be passed by the Tribunal in relation to the extent and whose responsibility it would be. The District Forest Officer, Rural Shimla, was directed to submit a plan as to how the project of reforestation is to be carried out at the same place or at the adjoining places. The proposal was to be on the basis of at least 10 times of the trees felled or cut i.e 4770. The cost of the entire reforestation was to be borne by the owner, Mr. Nagpal or such other persons who are found to have cut the trees.

9. In the meanwhile, the Tribunal issued an order of injunction against the owner or any person authorized on her behalf, from carrying out any construction activity and /or carrying on any non-forest activity without leave of the concerned department and specific orders of the Tribunal. A part of this land on which agriculture activity was already being carried, was to continue only in those areas. Accordingly, Mrs. Preminder Kaur, Mr. Amrik Singh Nagpal

and Mr. Praveen Sharma were issued show cause notices as to why they be not called upon to bear the entire cost of reforestation and directed to pay damages for degradation of environment and ecology of the area.

10. The investigation of the aforesaid FIR was being supervised by Additional S.P. It was revealed during the investigation that the trees had been cut and not uprooted along with their stumps and roots. The trees were cut by mechanical cutter. No tree was burnt but only loops and tops of the small trees, bushes and branches were burnt. As per the investigation, trees were cut at the behest of Mr. Nagpal and Mr. Praveen Sharma with the help of five or six workers who had come from District Solan.

11. The Supervising Officer was directed to complete the investigation and file report at the earliest. The Forest Department was also directed to submit a report with regard to the extent of cost for carrying on reforestation of 4770 trees at the site. The assessment was to include the cost of labour, purchase of saplings, their plantation, which would sustains at least for a period of 5 years and the staff required for that purpose. The Forest Department was also to inspect the site to find out that the stumps and roots of the trees which are existing, is there any possibility of re-growing by due care and caution. The Forest Department was given liberty to take expert advice from TERI. Subsequently, the Forest Department of the State of

Himachal Pradesh filed a detailed status report. It was stated on behalf of State of Himachal Pradesh that the area in question is the land adjoining to the reserved forest. It had been confirmed that the trees have been cut down illegally, unauthorizedly and without permission of any of the competent authority. Some of the trees have also been felled in the government forest land. The value of the wood is about 35 lakhs. There is a possibility of stumps of Baan trees to revive and re-grow. Efforts could be made to revive 426 Baan trees. But for the remaining trees reforestation would be required.

12. Learned counsel appearing for Mr. Nagpal and Mr. Praveen Sharma requested for filing of reply to place their version before the Tribunal. For the purpose of restoration of the environment and to prevent its degradation they volunteered to deposit a sum of Rs. 10 lakhs, through bank draft, with the forest department within a period of one week. The Tribunal allowed the deposit of Rs. 10 lakhs for restoration of environment and plantation of 4770 trees on the land in question. This amount was to be utilized, in addition to Rs. 20 lakhs which were already deposited by the owner of the land, for the purpose of restoration, reforestation and ensuring maintenance of saplings which are to be planted.

13. Further, the forest department was asked to take immediate steps to ensure that trunks, stumps and roots of

the trees which are remaining at the site and are capable of being revived through coppicing technology, are revived. This work was to be carried out by the forest department in coordination with the Legal Services Authority of the High Court of Himachal Pradesh, which would involve school children for the purpose of plantation and ensuring proper protection of the trees, at least for first five years. A request was made to the Hon'ble Judge in charge, Legal Services Authorities of the High Court to direct the concerned authority to immediately start plantation and make efforts to revive the trees at the site in question.

14. Time was granted to the owner of land to file reply to show cause notice issued by the Tribunal. It was also informed by the counsel appearing for the State of Himachal Pradesh that the party concerned has paid a sum of Rs. 10 lakhs in terms of the order of the Tribunal. Thereafter, Status Report was filed by the forest department of the State and the Tribunal then issued notices to the respondents. Mrs. Preminder Kaur and Mr. Amrik Nagpal had submitted that they would file reply to the show cause notice. Mr. Praveen Sharma was asked to file affidavit within two weeks.

15. The pleadings of the parties were complete in the month of May, 2015. However, the learned counsels appearing for the respective parties submitted that they would like to lead evidence. Parties were then permitted to file their affidavits,

by way of evidence (examination in chief). It was also ordered that the matter would be listed for cross examination of the witness whose affidavits were being filed by way of evidence. However, it was made clear that the trial before the Tribunal would confine to the remedy called for under Section 15 of the National Green Tribunal Act, 2010 i.e. the damage of environment, compensation and the restitution payable, as result of illegal and unauthorized cutting of the trees.

16. Subsequently, the matter was taken up for cross examination of the witnesses. On 13.07.2015, the cross examination of Mr. Fateh Singh Atwal was deferred. Summons were issued to M/s Vodafone at JMD Building, Gurgaon with instructions to produce complete call details of Mr. Fateh Singh Atwal and Mrs. Preminder Kaur. The learned counsel appearing for the State of Himachal Pradesh was granted liberty to summon the witness which he wants to produce, at his risk and responsibility. The cross examination of Mr. Fateh Singh Atwal, PW-1 was then concluded by the counsels appearing for respondent no. 2 and the State of Himachal Pradesh. A request was made by the counsel for respondent no.1, State of Himachal Pradesh that he wishes to produce Mr. Tarsem Lal as his witness. As the request was not opposed by the other side, liberty was granted to examine the said witness. The counsel for the State submitted that the three witnesses are

government employees and they are present. They were bound down for the next day of hearing. The counsel for the State submitted that he would examine the witnesses and not file his affidavit for examination in chief.

As the SHO concerned had submitted a report regarding service of summons on the Vodafone, as per the order dated 13.0.7.2015,ailable warrants were issued against the M.D of Vodafone on 05.08.2015 for his appearance before the Tribunal with complete record of cell no. 8894369286 and 9873508438, as well as any other number which had been issued to Mr. Fateh Singh Atwal and Mrs. Preminder Kaur. On the undertaking given by M.D of Vodafone company on 19.08.2015 for appearance and producing of the records, theailable warrants were ordered not to be executed. Later on 03.09.2015, the Tribunal was informed that cell no. of Mrs. Preminder Kaur is 9873508438 and is registered in the name of Mr. Fateh Singh Atwal which was being used by her. Mr. Fateh Singh Atwal Cell no. is 9873406805 and that of Mr. Tarsem Lal is 08894369286. Accordingly, the company was asked to produce the record of the said numbers. It was also stated by the counsel that Mrs. Preminder Kaur and Mr. Fateh Singh Atwal are not possessing any other number except the one given above.

17. On 04.09.2015, the recording of the statements of P.W-2, Mr. Tarsem Lal and C.W-1, Mr. Anuj Bhatia were

completed. The evidence of Mrs. Preminder Kaur was closed by her counsel. The evidence on behalf of respondent no. 1 was also closed. The counsel appearing for respondent no.2 and 3 submitted that he has to examine one witness. Learned Counsel appearing for the State of Himachal Pradesh submitted that he has summoned four official witnesses. Both the parties were directed to produce evidence and the case was listed for their cross examination.

The examination of Mr. Amrik Singh Nagpal (RW-3) was concluded on 22.09.2015. The statement Ms. Richa Banchta (SW-I) was concluded on 23.09.2015 but it was ordered that her presence was needed for certain court questions. On 01.10.2015, it was ordered that copy of the charge sheet, going to be filed by the Police, be also placed before the Tribunal. On 19.10.2015, cross examination of Ms. Nisha Sharma, S.W-2 was conducted by respondent no.1 and the counsel for Mrs. Preminder Kaur. However, her cross examination had continued even thereafter and was concluded on 30.11.2015. The evidence on behalf of State of Himachal Pradesh was recorded on 18.12.2015 and the statement of S.W-3 was completed. The counsel for the State submitted that he wishes to close the evidence. Therefore, the evidence of all the parties was concluded on that day. The matter was then posted for final arguments. Mr. Ritwick Dutta was appointed as Amicus Curiae on

19.02.2016. Final arguments in the matter were heard on 31.01.2017.

18. Meanwhile on 05.01.2015, the **Forest Department** of State of Himachal Pradesh has filed a **reply** in this case as the Tribunal had earlier issued directions that “State Government/ Forest Department shall examine this aspect and serve notices on all the private owners of land to be present before the Tribunal on the next date.”

It is further submitted that notice was issued to Mrs. Preminder Kaur (sole owner) and copies thereof were endorsed to Principal Chief Conservator of Forest (Head of Forest Force), Shimla, Conservator of Forest, Shimla Circle, Deputy Conservator of Forest, Shimla and Range Officer, Mashobra, on 04.12.2014. The Superintendent of Police, Shimla was requested to serve the notice on Mrs. Preminder Kaur.

19. It is stated by the forest department that a complaint regarding felling of trees on private land, near Tara Devi temple, was received telephonically by the Divisional Forest Officer, Shimla on the same day. The Divisional Forest Officer had immediately enquired from the concerned staff and directed them to visit the site and to take required action. The concerned staff took cognizance of the offence and seized some Oak wood i.e. 82.5 M³ on 14.11.2014 which was found stocked near Tara Devi temple. As the rest of the Oak wood and Deodar timber could not be traced

out, the matter was then handed to the Police for investigation by the Block Forest Officer, Shoghi and In-charge, Pateod beat on 14.11.2014. All stumps of felled trees were enumerated and marked with seizure memo.

20. The Divisional Forest Officer, Shimla also directed the Assistant Conservator of Forest division to visit the spot and submit a detail report. The Assistant Conservator of Forest then visited the spot along with the Range Officer, Mashobra and field staff on 15.11.2014. After inspection of the spot a detailed report was submitted to the Divisional Forest Officer, Shimla on 16.11.2014. As per this report, 477 trees of Deodar, Oak and other broad leaf species had been felled from private land, adjoining to the forest Taarab and located near Tara Devi temple, falling in the jurisdiction of Pateod beat and Shoghi block. The Range Officer, Mashobra informed that the SHO, Police Station, Boileauganj was requested by Block Forest Officer, Shoghi, on 14.11.2014, to lodge an FIR and the Police inspected the site on 16.11.2014. On 17.11.2014, SHO Boileauganj requested the Divisional Forest Officer, Shimla for guidelines and supplying the documents relating to felling of trees in private land. The documents were supplied to him on the same day. From 17.11.2014 to 19.11.2014, the staff of Mashobra range carried on the enquiry to collect revenue documents etc. so as to ascertain the status of land.

21. The Divisional Forest Officer, Shimla also personally inspected the spot on 20.11.2014 and submitted a report to the Conservator of Forest. With the intervention of Divisional Forest Officer, Shimla, an FIR was registered at Police Station, Boileauganj on 21.11.2014. Thereafter, the investigation was carried out by the Police at their level and the Forest Department was providing full assistance to them. A joint search operation was carried out by the Range Officer, Mashobra and Range Officer, Tara Devi along with staff of both the ranges, from 28.11.2014 to 30.11.2014. In the said operation, 29 Deodar logs and 4.192 cubic meters of wood had been seized.

Keeping in view the seriousness of the case, the Block Forest Officer, Shoghi and Forest Guard In-charge, Pateod beat were placed under suspension by Conservator of Forest, Shimla circle, vide order dated 20.11.2014. Subsequently, the Range Officer, Mashobra, Assistant Conservator of Forest, Shimla and Divisional Forest Officer, Shimla were also placed under suspension by the Government of Himachal Pradesh, vide its orders issued on 25.11.2014. On 04.12.2014, a notice was issued to Mrs. Preminder Kaur and her care taker.

22. The revenue department demarcated the area in presence of the staff of forest and police Departments on 06.12.2014 and the report was received in the office of Divisional Forest Officer, Shimla on the same day. It was immediately sent to

the Principal Chief Conservator of Forest on 12.12.2014. As per this report, one tree of Baan of class III had been felled from the forest land and all other trees from the private land of Mrs. Preminder Kaur. The matter was then continued under investigation of the police of Himachal Pradesh. The Government of Himachal Pradesh had also appointed an Inquiry Authority of the rank of Additional Principal Chief Conservator of Forest to submit his comprehensive report on the incident.

23. A **reply affidavit** has been filed by **Mrs. Preminder Kaur**, the owner of Casalini Estate, Mouza Jungle Taarab, Tara Devi Hills, Gramin, Shimla. She has deposed that she is the owner of the land measuring about 38 bigas (also known as Vedelina Estate) situated on the top of Tara Devi hills at Mouza jungle Taarab, Gramin, Shimla. Further, it is stated that she also owns a land and house at Casalina Estate which is situated in the same area below the Tara Devi temple and about 250 metres away from the affected land. It is stated that she was served with a copy of the order of the Tribunal dated 20.11.2014 by the office of DFO, Shimla, in the second week of December, 2014.

She has deposed that both the properties are looked after by Mr. Tarsem Lal, Manager, Mr. Mohan Lal Cook and the attendant Mr. Jaspal, Mali (gardener). It is also deposed that she was away from Shimla for the last several years and had occasionally visited it. According to the

deponent, she is presently staying in Garden Estate, Gurgaon, Haryana, to look after her ailing mother and also for her own medical treatment. Since 14.09.2014, she had been away from Shimla. She had visited Shimla on 01.12.2014, when she was required by the Police for the purpose of investigation and enquiry regarding illegal felling of trees. She has deposed that while in Shimla, she generally stays at Delphi Cottage, Chota Shimla.

24. The deponent, Mrs. Preminder Kaur has submitted that in order to meet the financial requirements of her family, she was constrained to offer Vedelina Estate for sale and had entered into an agreement on 12.09.2014 with Mr. Amrik Singh Nagpal, Director, M/s Pristine Hotels and Resorts Pvt. Ltd., 3008 Sector 35D, Chandigarh for the entire land of 38 bigas. Mr. Amrik Singh Nagpal had only paid the earnest/advance money and was yet to pay the remaining sale price. He had undertaken to obtain the permission under Section 118 of the Himachal Pradesh Tenancy and Land Reform Act, 1972; pay the remaining sale consideration and to get the sale deed executed on or before 21.05.2015. She has deposed that till date the possession of any part of the land has not been handed over to the purchaser or his agent/employee.

25. On 21.11.2014, she was surprised to learn from the media reports and her attendants in Casalini that many trees, including 5 to 6 Deodars; some Baby Horse Cashew

nuts and small young Oak trees have been cut and stolen from Vedelina Estate. This had happened when she was away to Gurgaon. Further, she has deposed that even her attendants, maali and other persons were unaware about the said incident and they came to know about it when Forest and Police Officials enquired about the reported incident on or around 21.11.2014. She is said to have submitted a complaint, through her lawyer, for trespassing and theft of property, with the Forest Department at Shimla, by email on 24.11.2014. During the course of enquiry, she had learnt that on 12.11.2014, demarcation of the land at Vedelina was carried out in her name, on or before of which the trees were already cut and removed from the land. She has deposed that her signatures on the application for demarcation to the Revenue Authorities were forged and one Mr Praveen Sharma, S/o Mr. Jayram Sharma, R/o Village and PO, Bhumati, Arki, District Solan, had posed as her representative, before the revenue authorities for demarcation of land and survey proceedings on 12.11.2014. He had also signed as her representative on the subsequent damage report prepared by the Forest department. Mrs. Preminder Kaur has categorically deposed that she had not authorized anyone including Mr. Nagpal or Mr. Praveen Sharma to represent her before any authority. It has also been deposed that she does not know anyone with the name of Mr Praveen Sharma nor she has

asked him or anyone else to carry out any demarcation proceedings on her land. As a matter of fact, Mr Praveen Sharma is an agent/employee of Mr. Nagpal. Since this was a clear case of impersonation and cheating the authorities, she submitted (through her son Fateh Singh Atwal) a criminal complaint with the Boileauganj Police Station, Shimla on 24.11.2014 for criminal trespass, impersonation, cutting of trees and theft.

26. The deponent Mrs Preminder Kaur has submitted that during the course of investigation, since the fact and circumstances of the case are such that the needle of suspicion points towards Mr. Nagpal and his agent/employee Mr. Praveen Sharma, the Police arrested, first Mr. Praveen Sharma and later Mr. Amrik Singh Nagpal. It has also been submitted that she and her son are fully cooperating with Shimla Police as well as the Forest officials, in the investigation of illegal felling and theft of trees from Vedelina Estate and has appeared before them for the purpose of finding out the real culprits.

27. It has been further deposed that she has not cut any tree nor permitted anyone to enter in her land for that purpose. It is submitted that it is a clear case of criminal trespassing, impersonation, cheating, illegal cutting and theft of trees. Therefore, the deponent had prayed that the Tribunal may order for proper investigation and enquiry into the illegal

felling of trees and prosecution of the culprits, in accordance with law.

28. Mr. **Amrik Singh Nagpal** has filed a reply to the show **cause notice** which was issued to him in pursuance of the order dated 08.01.2015. It has been submitted that the replying respondent is the Director of Pristine Hotel and Resort Pvt. Ltd and had entered into an agreement of sale with Mrs. Preminder Kaur, the owner of the land measuring 38.5 bigas, for a total consideration of Rs. 16 Crores. The part payment/earnest money of Rs. 3 Crores was made by the respondent to Mrs. Preminder Kaur by cash of Rs. 5 lacks and two cheques dated 12.09.2014 of the amount of Rs. 1,45,00,000 and 25,00,000. Subsequently, two cheques were given on 27.09.2014 of the amount of Rs. 1,00,00,000 and 25,00,000. The balance amount of Rs. 13 Crores was to be paid at the time of execution of the registered sale deed.

29. It has been submitted by respondent Mr. Amrik Singh Nagpal that since he is a non-agriculturist/non-Himachali, it was incumbent to obtain necessary permissions from State Government for the purchase of the land under Section 118 of the Himachal Pradesh Tenancy and Land Reform Act, 1972, within the stipulated time as provided under the agreement. The documents required for obtaining the said permission are the latest copies of the jamabandi and tatima shajra; copy of the agreement

entered into by the parties; the affidavit of the transferor stating that he, after the proposed transfer, will not become landless and if it is so, then he will not claim any benefit/land under any scheme prepared for the benefit of landless persons in the State and essentiality certificate.

The documents which were required by the respondent for obtaining the essentiality certificate are preliminary project report; copy of jamabandi and tatima; NOC from Town and Country Planning Department; NOC from Forest Department; IPH Department; Electricity Board; site plan showing contours/constructions; roads; existing trees; the distance of existing trees from construction; approximate distance of land in question from some permanent station, NOC from the local bodies stating therein that the infrastructure as well as service provisions have been considered which are not objected to and any other document which may deem fit to ascertain eligibility of the applicant and suitability of land proposed to be transferred.

- 30.** The answering respondent no.2 had contemporaneously authorized Mr. Praveen Sharma to apply for all permissions and NOCs which are required for obtaining the requisite permissions under Section 118 of the said Act, of 1972. Mr. Praveen Sharma subsequently applied for the requisite permission and NOCs including demarcation of the land, in accordance with law.

31. The land is in possession of the owner and the same is covered with barbed wires and has a locked gate which is looked after by two care takers of the owner, who are living in the area in question. The keys of the gate are in possession of the care taker and undoubtedly, it is not possible to damage/cut even a single tree without obtaining the keys. On 16.11.2014, Mr. Tarsem Lal (one of the care taker) telephonically contacted the answering respondent and requested him, on behalf of the owner, to depute someone for visiting the concerned office of the Forest department to resolve the issue viz-a-viz the trees on the land in question. In reply the answering respondent had submitted that in good faith and due to on-going relations with the owner, he asked Mr. Praveen Sharma to visit the concerned office of the Forest Officer. Further it is stated that it was in this factual background that Mr. Praveen Sharma visited the office of the Forest Range Officer and signed the damage report, on behalf of the owner. Therefore, according to the answering respondent, whatever was being sought and alleged against him by the owner before the Tribunal on 08.01.2015, is baseless, conatus and vexes.

32. It is submitted by the answering respondent, Mr. Amrik Singh Nagpal that in the given facts and circumstances, it is evident that he is not in any way related to this gruesome act of cutting/felling of trees of the land in question. It is

further submitted that he has deposited Rs. 10 lakhs with the forest Department in compliance of the order dated 20.01.2015. Therefore, he has prayed that he be discharged and the show cause notice be withdrawn.

33. Mrs. Perminder Kaur has also filed a subsequent response to the show cause notice issued by the Tribunal on 28th November, 2014. It has been submitted that it was in furtherance of and to supplement the facts stated in the affidavit already filed on 15th January, 2015. She has reiterated the facts with regard the properties of Vedelina and Casalini. Further she has stated that Casalini was an agricultural land and was also having her residence. Whereas Vedelina, had no residence, except for an old and dilapidated structure which, when the land was acquired, was already unfit for use by humans, and was being used as a cowshed. Even though both the properties are very close to each other, Vedelina which is at a higher height than Casalini is not visible from there, as there is a thick forest in between.

34. Vedeline was used for agricultural purposes, (mostly growing vegetables) although not continuously and was a wide open piece of land with beautiful terraces. Although it had many trees but most of them were on one side and the rest were scattered. Besides various trees, this land also had numerous blackberry shrubs on it, enough to enable the family to make blackberry jelly in substantial quantity.

The culprits led by Mr. Nagpal, in their ignorance, had the entire blackberry bushes removed and uprooted, taking them to be wild shrubbery. The staff had at all times, stayed at Casalini and no one was at Vedelina. Nevertheless, in all these years there had never been any incident of tree felling or trespassing.

35. Further, it is stated that in the earlier years, particularly in the decade of 1980's and 1990's, the family of the answering respondent had numerous staff in the area, including gardeners, people for maintenance and those looking after and preserving these properties. The answering respondent used to spend a lot of time in Casalini, even alone and her husband, Late Mr. Narinder Singh Atwal, used to visit frequently. However, with advancing age, the respondent began to reside for lesser time at this property and more in her mother's cottage at Chota Shimla. In those days, she would occasionally visit the property and that too, just for a day.

36. It is also stated by Mrs Preminder Kaur that she had been a very keen gardener, and has penchant for creating beautiful and exceptional gardens wherever she resided. She is particularly fond of trees, flowers and greenery of all kinds. In the land in question, she had been responsible for the growth of a large number of trees and had carefully nurtured them. In the said property (Vedelina) she had planted many trees of Horse Chestnut variety, and in

Casalini some chinar trees from Kashmir, which have thrived. The respondent has a passion for tree plantation and for nurturing green cover, even to the extent that she had not permitted ordinary shrubs and bushes to be removed. She had encouraged a thick growth of green cover on the entire land in which she had resided or had been connected with. Casalini was bought in the late 1970s from an English lady and as there was no metalled road, the occupants had to walk up from the lower road which was a steep climb but being lovers of nature, the respondent and her late husband went ahead to purchase these lands. Many years later metalled road was constructed up to Tara Devi Temple, most of which was common for both properties and could be used for them. She has annexed photographs of other gardens created and nurtured by her in the past, as evidence of her creative talent for greenery. She has also annexed print outs of satellite pictures extracted from Google Earth depicting the aerial view, as in the month of September, 2014 and some photographs of the land as it existed before the damage was done.

37. Mrs Preminder Kaur has also submitted that sale had to be made owing to financial trouble and as she had ceased to find it feasible to pay adequate personal attention to both the properties. She was and is still looking after her mother who is now 92 years old and lives in Gurgaon. Furthermore, when she was in Shimla she was mostly

staying in her mother's house at Chota Shimla and would only go across to Casalini for a day. Besides, she hardly had any staff left there and did not feel safe to stay alone, as Casalini is somewhat remote. Being faced with financial difficulties, a decision was taken to sell Vedelina land to a suitable purchaser. It was in these circumstances that the answering respondent came in contact with Amrik Singh Nagpal, who later turned out to be an utterly unscrupulous criminal minded person and he had no regard either for law or for ecological balance of nature. He is motivated only by greed and commercial gains. Since earlier attempts to sell the land had not materialised, Mr. Amrik Singh Nagpal instilled some confidence in the respondent and convinced her to enter into transaction to sell Vedelina land.

38. Mrs Preminder Kaur is said to have come in contact with Mr. Amrik Singh Nagpal through a broker named Mr. Ravi Anderson. She had then come into contact with three other brokers namely Mr. Virk, Mr. Bains and Mr. Arora. These people from Chandigarh had introduced the respondent with Mr. Amrik Singh Nagpal. The answering respondent did not have any prior connection with him nor she had any dealing in the past. He was a stranger to answering respondent who had met her mainly for the purpose of purchasing the land. Other than this transaction, there was no contact whatsoever with him. The first meeting with Mr. Amrik Singh Nagpal took place in August 2014, in the

presence of the three brokers. The answering respondent was accompanied by her son, Fateh Singh Atwal, a Chartered Accountant, and Mr. Ravi Anderson.

39. It is also stated by Mrs Preminder Kaur that broadly speaking, it was agreed that as against the total consideration of Rs. 16 crores, an advance of Rs. 3 crores and the balance amount was to be paid after getting the clearance and permission of the State Government, under the relevant provisions of law. While the answering respondent insisted that there should be an outer limit of time for getting the permission for change of the land use and its commercial exploitation. Mr. Amrik Singh Nagpal stated that he would need further time to get the permission for transfer of land, as being a non-resident of Himachal Pradesh.

40. According to Mrs Preminder Kaur the salient features of the agreement were that the time period within which Mr. Nagpal was to get clearance and permission from the authorities was fixed up to 28th February, 2015, with a penalty clause to come into operation after that date. Besides the penalty clause, there was a grace period up to 21 May, 2015, with imposition of penalty. Cheques amounting to a total of Rs. 2.95 Crores were received by the answering respondent, apart from an amount of Rs. 5 Lakhs by cash. It is stated that at this stage two agreements were executed, one each in the name of two

separate companies which are under complete control of Mr. Amrik Singh Nagpal. In all, a sum of Rs. 3 crores was received by way of advance/ earnest money from Mr. Amrik Singh Nagpal and no other post-dated cheques. The answering respondent is said to have also signed a supplementary agreement to the effect that in case the clearance under Section 118 comes earlier, then he would pay 90% of the total amount and the balance when second clearance comes through. These agreements were notarised on the next day at Shimla, in the presence of the parties. It is said that this was merely an initial understanding and was cursory in its language. No detailed description of the land was given and when, the sale materialise, all details were to be given eventually in the sale deed and no mention was made of the trees growing on the said land. Subsequently, after 14th September, 2014, neither the answering respondent nor any of her family members had returned to Shimla and they remained at Gurgaon throughout. On 7th November, 2014 the parties met at New Delhi when the two agreements were merged into one document. The final agreement has been annexed to the reply. Thereafter it was only on 21th November, 2014 that the answering respondent is said to have come to know, on the internet, regarding the trees having been felled on her land by someone. On hearing the news she made inquiries

from her staff member, Mr. Tarsem Lal residing at Casalini property.

On the same day the police and the official of forest department visited the property of respondent, ostensibly to make inquiries about the event.

41. The son of Mrs Preminder Kaur then went to Shimla with his lawyer, on 24th November, 2014 and presented themselves before the forest officials, who informed about the negative role played by Praveen Sharma. He had turned out to be an accomplice of Mr. Amrik Singh Nagpal and a conspirator. Without any authority from the respondent and in collusion with Mr. Nagpal, Mr. Praveen Sharma wrongfully represented as her authorised signatory and got the land in question demarcated, fraudulently. During this trip the son of respondent had also lodged a report with local police.

42. Mrs Preminder Kaur has summarised her case by stating that, in the circumstances as set out above, it becomes obvious that this is a case of a developer of real estate seeking to invest in prime land in the hills, being carried away by a desire to bring about a speedy development and in the process destroying valuable green cover in a most clumsy and destructive manner. It is obvious that being completely motivated by profit, and having no regard for the ecology of the area, Mr. Amrik Singh Nagpal acted in great haste and without seeking any permission or even

completing the transaction of sale, went ahead and started getting the land cleared of green foliage. This action is extremely reprehensible and he deserves a strictest punishment, as provided for in law. The answering respondent is a victim of these actions rather than being a guilty party. Being a victim, the answering respondent deserves to be exonerated honourably.

43. Mrs Preminder Kaur has further stated that the interim amount paid by her, under orders of this Tribunal, deserves to be recalled and the answering respondent is praying for a suitable direction to refund the said amount and entire cost for restoration of the property as well as the green cover, deserves to be imposed on Mr. Amrik Singh Nagpal and Mr. Praveen Sharma. The answering respondent is, entitled to have the adverse remarks, passed against her be expunged as they tend to prejudice the issue against her and are highly prejudicial.

Therefore, it has been prayed by the answering respondent that show cause notice, in so far as it applies to her, be discharged and she may be exonerated and discharged of all charges levelled against her. It is also stated that penal action be taken against the guilty persons.

44. A reply/affidavit has been filed by respondent Praveen Sharma to the show cause notice issued to him by the Tribunal on 08.01.2015. He has submitted that he is working as a Manager in the Pristine Hotel and Resort

Pvt. Ltd, Chandigarh. Its director Mr. Amrik Singh Nagpal had entered into an agreement of sale on 12.09.2014 with Mrs. Preminder Kaur, the owner of the land measuring 38.5 bigas situated near Tara Devi temple, Shoghi, Shimla, for a total sale consideration of Rs. 16 crores. Further, he has stated that Mr. Amrik Singh Nagpal is a non-agriculturist/non-Himachali. It was incumbent upon him to obtain necessary permissions from the State Government for purchase of the land, under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 within a stipulated period, as provided under the agreement.

45. It is also submitted by the answering respondent Mr. Praveen Sharma that he had been authorized by Mr. Amrik Singh Nagpal to apply for all permissions and NOCs as required, and obtain the same. Consequent thereto he is said to have applied for the permissions and NOCs, including demarcation of the land in accordance with the law. He has placed the copy of the authorization letter on record.

46. The answering respondent Mr. Praveedn Sharma has also stated that the land is in possession of the owner (Mrs. Preminder Kaur) and the same is covered with barbed wires and has a locked gate. This land is looked after by two care takers of the owner who lives in a house, in the area in question. The keys of the gate are in possession of the care takers and undoubtedly, it is not possible for anyone to

enter the premise without permission. The answering respondent has submitted that he has visited the land, only at the time to its demarcation. However to obtain requisite documents, for the purpose of permission under the Himachal Pradesh Tenancy and Land Reforms Act, 1972, namely, Jamabandi, Tatima, Shajra, etc. he visited the office of the concerning Revenue authorities innumerable times, at Shoghi.

47. Further, it has been submitted by the answering respondent Mr. Praveen Sharma that on 16.11.2014, Mr. Tarsem Lal (one of the care taker) telephonically contacted Mr. Amrik Singh Nagpal and requested him, on behalf of the owner, to depute someone to visit the concerned office of the forest department so as to resolve the issue viz-a-viz the trees on the land in question. Mr. Amrik Singh Nagpal, in good faith due to the on-going relation with the owner, asked me to visit the concerned office of the Forest Officer. It is to be noted that it was in this background that the answering respondent visited the office of the Forest Range Officer and signed the damage report, on behalf of the owner.

48. Therefore, it is submitted by the answering respondent Mr. Praveen Sharma that all that has been sought to be alleged against him before this Tribunal is baseless, concocted and vexatious. Further, the answering respondent has submitted that in the aforesaid facts and

circumstances, it is evident that he is in no way related to this gruesome act of cutting/felling of trees on the land in question. Consequently, he has prayed that he may be discharged and the show cause notice be withdrawn.

49. A status report in case of FIR No. 233/2014 has been filed by Mr. Ajit Singh, Assistant Sub Inspector, Police Station West, Shimla, District Shimla on 3rd May, 2016 along with three documents namely; the statement of Mr. Ravi Anderson, Mr. Kishori Lal and Mr. Mahender Singh Chadda. The said statements were **recorded under Section 164 CrPC** by the learned Additional Chief Magistrate, Court No.2, Shimla. The statement of Mr. Ravi Anderson and Mr. Kishori Lal were recorded on 10.03.2016 and that of Mr. Mahender Singh Chadda on 30.03.2016.

It has been stated in the report that on 21.11.2014. Ms. Richa Banchta, Forest Range Officer, Mashobra had filed a complaint, for registration of a case, to SHO, Police Station, West Shimla alleging that the In-charge, Pateod Beat and Forest Block Officer, Shoghi had intimated her on 14.11.2014 that during patrolling they had noticed in the land adjoining to Tarab jungle that about 400 trees have been felled. On enquiry it was revealed that this land belongs to Mrs. Preminder Kaur and is situated adjoining to the reserve forest Tarab. The said trees have been felled adjoining to the jungle and probably some trees have also been felled in the government forest. Mrs. Preminder Kaur

has not obtained any permission to felling of the trees. On the said complaint, a case FIR No. 223/2014 under Section 30 and 33 of the Indian Forest Act, 1927 and Section 447 of IPC was registered at Police Station, West Shimla. The investigation was entrusted to the deponent (Mr. Ajit Singh) by the SHO Police Station, West Shimla.

50. It has been further deposed by Mr. Ajit Singh that during the course of investigation the site was inspected and a site plan was prepared. The stumps of felled trees were counted and numerated through the forest officials. The forest officials had produced the list of felled trees. The woods of felled trees had also been found in the premise of Durga Mata Mandir, Tara Devi which were taken in possession, through a seizure memo. The statements of the witnesses were also recorded under Section 161 CrPC.

51. On 27.11.2014, the papers of the land in question had been procured from the revenue department. The deponent had, thereafter, proceeded on leave due to some domestic work. The investigation was then taken over by Sub Inspector Rajesh Prashar on 28.11.2014 and he applied for demarcation of the land in question. The land was demarcated by field Kanoongo, Mr. Jai Pal Chauhan in the presence of the officials of forest and police department. The statement of Revenue Officer, Forest Officer and other witnesses were recorded under Section 161 CrPC. The copy

of the authorization letter issued by Pristine Hotel and Resorts Pvt. Ltd. Chandigarh had also been obtained.

52. It has been further stated in the status report that the accused Mr. Praveen Sharma had applied for demarcation of the land in question on 27.10.2014 and signed the same as Mrs. Preminder Kaur. The said document was also taken in possession by the police. The copies of the documents applied for demarcation on 27.10.2014 were obtained. By statement of witnesses and documents on record commission of offenses under Section 420, 447, 465, 468 IPC and Section 16 of the Land Preservation Act, 1978 were found to be made out against Mr. Praveen Sharma and he was arrested on 29.11.2014.

53. On 30.11.2014, accused Mr. Praveen Sharma was produced before the learned Court and was remanded to police custody for one day. But the accused had to be admitted in Indra Gandhi Medical College, Shimla as he was suffering from Hernia. He was operated in the same night. The accused Mr. Praveen Sharma had then filed a bail application on 01.12.2014 before the learned Trial Court and the same was allowed. Mr. Amrik Singh Nagpal was directed to join the investigation on 02.02.2014. Mrs. Preminder Kaur and Mr. Fateh Singh Atwal were also examined. Mrs. Preminder Kaur had produced the agreement to sell of the land and an affidavit which were taken in possession by the Police. The statements of

witnesses were recorded under Section 161 CrPC. Section 120 B and 201 IPC had also been added in the case.

54. He has further deposed that on 03.12.2014, accused Mr. Amrik Singh Nagpal had also been examined but has expressed his unawareness regarding felling of trees. He had also filed an application for bail. On 04.12.2014, the bail matter was listed before the learned Additional District Judge, Shimla and the same was dismissed. But the accused Mr. Amrik Singh Nagpal was not present in the Court. The investigation of the case was again taken up by the deponent on 05.12.2014.

55. On 06.12.2014, Naib Tehsildar, Sh. Bishan Singh had carried out the demarcation of the land in presence of forest department and counsel for Mrs. Preminder Kaur. On 11.12.2014, demarcation report of Naib Tehsildar had been obtained in which it was specifically mentioned by the forest department that tree No. 72 in Khasra No. 291 falls in Government land. Thus, Section 41 and 42 Indian Forest Act, 1927 and Section 379 IPC had been added in this case.

56. On 22.12.2014, accused Mr. Amrik Singh Nagpal had surrendered before the Superintendent of Police, Shimla and he was taken in custody. The accused was produced before the learned Judicial Magistrate, Court No. 5, Shimla and he was remanded to Police custody upto 26.12.2014. On 25.12.2014, one Mr. Virender Kumar Sharma had produced an unsigned statement of Mrs. Preminder Kaur,

recorded by field Kanoongo J.P Chauhan and it was also taken into possession, through a seizure memo.

57. He further submitted that on 26.12.2014, statement of Mr. Prem Chand, cook Durga Mata Mandir, Tara Devi had been recorded under Section 164 CrPC by the Judicial Magistrate 1st Class, Shimla. On 28.12.2014, copy of the damage report had been taken into possession, through seizure memo and the statement was also recorded.

58. The deponent Mr. Ajit Singh has submitted that on 30.12.2014, the accused Mr. Amrik Singh Nagpal was released on bail by the learned Trial Court. The suspect Mr. Jai Pal Chauhan had also filed an application for bail before the learned Additional District and Session Judge-2, Shimla which was listed for hearing on 14.1.2015. The accused Mr. Jai Pal was produced before the Trial Court and then released on bail.

59. Later on the matter had been listed before the National Green Tribunal, Circuit Bench at Shimla on 09.01.2015 and the Superintendent of Police, Shimla was directed to file a status report on the next date of hearing. A status report was then filed on 20.01.2015.

60. On 29.01.2015, specimen signatures of accused Mr. Praveen Sharma had been obtained by the Court of learned JMJC-5 Shimla. On 24.02.2015, admitted handwriting of Mr. Praveen Sharma was taken through seizure memo. The statement of witnesses had also been recorded under

Section 161 CrPC. On 25.02.2015, the documents in question were sent for comparison to the State Forensic Science Laboratory, Junga, District Shimla.

61. The result of specimen signatures and admitted handwriting of accused Mr. Praveen Sharma were received on 05.05.2015. After completion of the investigation, a challan was prepared on 19.08.2015 by SHO, P. S West, Shimla under Section 173 (2) CrPC and sent to the prosecution for scrutiny. The prosecution had raised certain objection, including that of the outcome of the orders of NGT, Principal Bench.

62. It has been submitted by the deponent Mr. Ajit Singh that during the course of investigation, some new facts had come on record. Statements of three witnesses namely; Mr. Ravi Anderson, Mr. Kishori Lal and Mr. Mahender Singh Chadda had also been recorded under Section 164 CrPC. In the said statements some new facts had come to light as they had deposed that the trees were felled by the labours/servants of Mrs. Preminder Kaur and Mr. Fateh Singh. The deponent has also deposed that summons under Section 160 CrPC were issued to Mr. Tarsem Lal and Mr. Mohan Lal, servants of Mrs. Preminder Kaur and Mr. Fateh Singh. They participated in the investigation on 21.04.2016 and they had stated that neither the trees had been felled by them nor their owner, namely Mrs. Preminder Kaur. The final report in the matter had been presented before the

learned Court of Chief Judicial Magistrate, Shimla on 25.04.2014 with the note that in case any clue comes to the notice of replying respondent, supplementary challan would be submitted before the learned Court.

The statements of the witnesses who are examined by the police do not carry any evidentiary value. The veracity of the witnesses is to be tested in the court. A statement given by the witness before the police can only be used for the purpose of confronting him during the trial. In this case witnesses had appeared before the Tribunal. A original record was also produced. The witnesses were cross examined before the Tribunal and their evidence was appreciated. Therefore, the testimony of the witnesses before the Tribunal, not only have evidentiary value but it is legal evidence.

It is relevant to mention here about the standard of proof in criminal and civil cases. The standard of proof, in essence, can be loosely defined as the quantum of evidence that must be presented before a Court before a fact can be said to exist or not exist. As the type of cases before a Court can be classified into criminal or civil, so can the standard of proof. There is a clear understanding that the Courts follow according to which the standard of proof to be followed in a criminal case is that of 'beyond reasonable doubt' whereas the standard of proof changes, even lowers to the 'balance of probabilities' in cases of civil proceedings.

Two separate standards of proof are recognized- proof beyond reasonable doubt and proof based on the balance of probabilities. The former is the standard adopted while dealing with criminal cases while the latter is the standard in use in case of civil suits. Different standards of proof are constructed seemingly to, among other things, minimize the high social costs that may arise on account of errors.

The standard used in criminal trial that is proof beyond reasonable doubt is viewed as requiring a high degree of satisfaction that the prosecution must, through the evidence and materials presents. This high degree often leads to acquittal sometimes even when the authority trying the case feels that the guilt of the accused, based on the evidence, is more probable than his innocence.

A lower standard, that of balance (or preponderance) of probability is applied in civil litigation. Even though the standard of proof is lower in civil cases, it is no reflection on the seriousness of the allegations in question. The rationale behind the use of such a standard is that in some cases the question of the probability or the improbability of a happening is an imperative consideration to be taken into account in deciding whether that event has actually taken place or not.

63. The learned counsels for the respective parties had requested to lead evidence before the Tribunal and as such an order was passed on 19.05.2015 that the parties may file

affidavits which would be evidence for the purpose of examination in chief. Further, it was ordered that the witnesses, who file such affidavits, were to be cross examined before the Tribunal. However, it was made clear that the proceedings before the Tribunal would be confined to the remedy under Section 15 of the NGT Act, 2010 i.e. the damage of the environment as a result of illegal and unauthorized cutting of trees and the compensation as well as the restitution payable.

64. Accordingly, the parties filed their affidavits in evidence for the purpose of examination in chief. **Shri Fateh Singh Atwal** s/o Mrs. Preminder Court (RW-1) filed his **affidavit** on 10.07.2015 along with documents which were duly exhibited by the Tribunal.

65. Mr. Fateh Singh Atwal son of Sh. Narender Singh Atwal resident of EGI/26, Garden Estate, MG Road, Gurgaon, **appeared in the witness box on 13th July, 2015 (RW-1)** and on oath deposed that *“RW-1/X is the affidavit that I tendered in evidence by way of examination in Chief. This affidavit is signed by me marked as Y-Y1 and I have signed this affidavit and the averments made therein are true and correct to the best of my knowledge. The documents which have been filed therewith may be read in evidence and they are marked as exhibit RW-1/1 to RW 1/1.”*

66. The said witness was **cross examined by the learned counsel appearing for Amrik Singh Nagpal, respondent**

no.2. He has stated that “land referred to in para 2 of my affidavit is in our exclusive possession from the date we purchased it. Of and on we used to carry out our agricultural activities on this land. There were plenty of open spaces on the land. Further, he has deposed that it is correct that there were some open fields on the land in question.” He has also stated “he cannot see whether each open space had measured 5 to 10 biswas. There might have been some spaces which measured even more than 5 to 10 biswas. Even in these spaces of land there were scattered trees, however, they were not on all pieces of land. I had not kept any record of the number of trees existing on the site in question from the date we purchased the land. The distance between Casalini and Vedalina estates is around 15 minute walk. It is correct that in my affidavit dated 6th January, 2015, I have stated that the distance between these two estates is round about 250 meters. There is motorable road to Casalini estate but not to Vedalina estate. This property is partly fenced; there is one gate from the lower side of the property. I came to know about the felling of the trees from internet on 21st of November, 2014. I do not know if police visited the site in question on 16th November, 2014. I do not know if the caretaker were present when the police visited the site. It is correct that after having come to know of the cutting of the trees I had contacted my lawyer and the complaint to the authority was drafted by my lawyer. I

visited the site in question after having come to know of felling of trees on 24th November, 2014 when I went to Shimla. My lawyer was with me. Mr. Nagpal never told me that he wants to construct eco-friendly resort on the site in question. It is correct that person who is a non-agriculturist and buys land in Himachal Pradesh would require permission from authorities concerned. The land adjacent to Vedalina estate is a forest land. I do not know whether the receiving permission under Section 118 of Himachal Pradesh tenancy and Land Reform Act 1972, is necessary. I do not know what are the procedures therefore, it is incorrect to suggest that I had approached for getting land demarcated. It is correct that we had intended to sell the property, had made efforts once or twice prior to the meeting with Mr. Nagpal. Reason for the sale of the property is financial difficulties of the owner. It is not correct to suggest that earlier these offers failed because of the high prices quoted by the owner. It is correct that in the agreement to sell with Mr. Nagpal, dated 12th September, 2014, there was no mention of the trees in the agreement and the description of the land. It does not mention the exact topography or the extension of vegetation etc., in relation to the land in question. I am now shown the agreement dated 12th September, 2014, exhibit RW-1/A. The time limit provided in the agreement was mutually agreed. The agreement also does not raise any obligation upon the part of the seller to

help the buyer for requisite clearances. It is incorrect to suggest that trees were cut by owners or by me or under our directions to overcome the financial difficulties of the owners. In furtherance, to the agreement to sell, the owner have received a sum of Rs. 3 crores from Mr. Nagpal. It is incorrect to suggest that even when the NGT had taken cognizance of this case still more money was demanded by the owner from Mr. Nagpal. It is incorrect to suggest that false complaints were filed by me against Mr. Nagpal in order to escape the liabilities and consequences of law. When I had gone to Shimla to lodge a complaint with the forest department, there I came to know about Mr. Praveen Sharma from Chief Conservator of Forest.”

Witness was confronted with portion marked because in the affidavit of the witness exhibit RW-1/B at Page no. 103 Para 6, it finds mention that she learned from the newspaper report and from the telephonic discussion on 24th November 2014 that Mr. Praveen Sharma has been employed or engaged by Mr. Nagpal. “It is incorrect to suggest that I have received two cheques of Rs. 2.5 lakhs each dated 21st May, 2015, from Mr. Nagpal at the residence of my mother who is the owner of the property and had encashed the same. But in fact Mr. Nagpal surreptitiously deposited two cheques in our account which were encashed and having come to know of the same we had returned the money to Mr. Nagpal through NEFT transfer of the sum of Rs.

5 lakhs on 17th June, 2015. It is correct that one of our caretaker name is Mr. Tarsem Lal. This person stays at Casalini Estate but keeps on coming up and down and works for us.”

“I have not given any instruction to Mr. Tarsem Lal to call Mr. Nagpal. Therefore, I cannot admit or deny whether the same person had called Mr. Nagpal around 16th November, 2014. I was not present when the police authority along with the revenue department visited the site on 2nd November, 2014. It is incorrect to suggest that I have deposed falsely and have falsely implicated Mr. Nagpal in the present case or in any other case in that matter.”

67. The cross examination of the witness resumed on 6th August, 2015, when it was taken up by the counsel appearing for respondent no. 2, Mr. Amrik Singh Nagpal. The witness deposed that “on 22nd November, 2014 my mother through her lawyer made a complaint through an email. It is correct to say that on 24th November, 2014, I handed over the copy of the same to the officials in the forest department. It is also correct that on 24th November, 2014 we went to the police station to file a complaint. First we went to the forest department to lodge a complaint. I have seen the copy of the complaint shown to me now. It was already exhibited as RW-1/4. It is nowhere recorded therein that I had come to know about Mr. Praveen Sharma through the conservator of forest.”

68. On cross examination by learned counsel for the State of Himachal Pradesh Mr. Fateh Singh Atwal has deposed that *“till couple of years ago I was carrying on my family business with other family members of my family from where I quit and since then I am not carrying on any business. Mr. Tarsem Lal was the manager of our estate and Mr. Manohar Lal and Mr. Jaspal was the gardener. The gardener used to come part time. I used to speak to my staff not quite often. Mr. Tarsem Lal used to come to Delhi and inform me about the property. I have a brother who is carrying on family business, besides him my mother is there. I do not have exact count of the trees on the site in question. However, there were large number of trees, I do not know exactly when I had gone to the site in dispute prior to 16.11.2014. I remember having gone sometime back to Casalini estate the lower part of our property but I did not go to the other estate of the property. We are not staying in that property for quite some time. Now we stay in main Shimla. Besides these two properties my mother has also a property in Chhota Shimla namely Delphi Cottage. Mr. Tarsem Lal did not inform me about the incident but we came to know about the same from the internet when we rushed to Shimla. My employees have mobile phones I or my employees were not aware of any demarcation of the land. I was not aware if the demarcation had been carried out in or my name, I only came to know about it when I visited Shimla. I was shown*

the demarcation application when I had lodged a complaint and gave the statement to the police. I have also stated in my reply filed before the Tribunal that on the application of demarcation my signatures have been forged. I have lodged a complaint to the police against Mr. Praveen Sharma, copy of which have also been filed by me on the record of the Tribunal. The same is exhibited as RW-1/C. It is correct that in the complaint dated 24th November, 2014, to the police I had not specifically stated that Mr. Praveen Sharma has forged my signature.”

- 69.** On cross examination by the learned counsel appearing for the State of Himachal Pradesh the witness Mr. Fateh Singh Atwal has further deposed that *“I or my mother never made an application for demarcation of the land to the revenue authorities and in any case not in this period. I or my mother did not make any application to the forest department in order of felling of trees. I do not know if the forest officer have visited the property in question at any time. I do not know Mr. Praveen Sharma. Mr. Nagpal never visited the property in question in my or my mother’s presence. In August 2014 when I met Mr. Nagpal for the first time at Pachkula he was already aware about the entire property in question and so we believed that he must have visited the property. Mr. Nagpal did not ask me or my mother that he wanted to visit the property. Mr. care taker did not inform me that Mr. Nagpal or his manager or his consultant had*

visited the property in question. I have no knowledge that Mr. Praveen Sharma ever visited the property in question. I am aware that non Himachali, for purchasing in Himachal Pradesh, is required to take permission under Section 118 of the Himachal Pradesh Land Revenue Act, 1972. Mr. Nagpal was also aware of this provision. It is correct that forest officers had visited the property in question, for conducting the investment on the felling of the trees, the forest officials never recorded my statement. I went to the property on 24th November, 2014 and my lawyer was present with me. Mr. Tarsem Lal was also present. I came to know that a police case is also been registered. When I went to Shimla there has never been any incident of felling of trees in the property in question, in the past. On 24th November, 2014 I along with my lawyer went to the forest department to lodge a complaint. The complaint was made to the conservator of forest, whose name I don't remember. I went to Boileauganj Police Station. I lodged a complaint with the police. I do not know whether the crime was registered or not. Next day I went to SP office and left a copy of the complaint. The forest official did not visit me or my mother. During my stay at Shimla I stayed at my house in my town and not in the property in question as I have already stated except the three of us mentioned earlier, nobody else was present at the property in question at that time. It is incorrect to suggest that the trees have been felled in connivance by both the

purchaser and the seller. I or my mother had never made any complaint to the authority about the illegal entry or trespass into the property in question.”

Court Questions

70. Question: Why you or any of your employees did not make any complaint to the Police or Forest Authority of the State Government immediately when the trees were found to be cut or in any case prior to 14th November, 2014 when on telephonic message the DFO has registered the case?

Answer: *“I did not know whether my employees also did not know about the cutting of the trees.”*

71. Demeanour is noticed:

Questions were asked repeatedly by the court and it was found that he was avoiding to give the answers clearly which were clear within his personal knowledge.

“Mr. Tarsem Lal has a cell. I do not know his cell number. I don’t speak to him very often but my mother speaks to him. I have received calls on my cell from Mr. Tarsem Lal. I am carrying my cell (after seeing the cell) I can now state that the number of Mr. Tarsem Lal is 08894369286. The same cell is with me for a long time now. I have service of Vodafone. It is post-paid service. My mother has cell no. 9873508438. It is also post-paid. The service provider is Vodafone. I get service directly from Vodafone. All bills that I have received do not carry the details.”

72. Mr. Tarsem Lal son of Sh. Kesar Ram resident of Chhota Shimla, Himachal Pradesh appeared as witness (PW-2) on 5th August, 2015.

He has deposed that *“Delphi cottage is my normal place of residence. It takes nearly 1 ½ hours from my place to temple Taradevi by bus. The land in question is approximately 1 Kms away from the temple Tara Devi. At Delphi Cottage my duty is to look after the guests, prepare food and to look after the comfort of the person living there. In a year I used to visit the property in question three times in summer preferably. 3 small rooms have been constructed at the property in question for housekeeping. There is no boundary wall on the property in question.”*

73. Cross examination of the witness was conducted **by the counsel for Mr. Amrik Singh Nagpal, respondent no. 2.**

He deposed that *“I am not educated. Further that I know Mr. Narender Singh Atwal when I was 13-14 years old I came in contact with the family for the time time. Since then I know respondent no. 1 and her family. I came to know Mr. Atwal nearly after 2 years of me coming to Shimla. Mr. Atwal died nearly 3 years back. I received a salary of Rs. 15,000 per month from my employer. It is correct to suggest that the property in question is an open land and has open spaces. It takes around 25 minutes to cover the distance between Casalini estate and Vedalina estate. In Casalini estate one person used to live and I used to go to Casalini*

estate to give money or if they need any other help. A person by name of Mr. Mohan Lal used to live there alone. There were 2 pets kept by my employer there. I used to go from my place of residence to the property in question by bus. I used to take Mrs. Preminder Kaur and her son often. But I did not speak to her when she was unwell. Nearly 3 cows and one bull were kept by my employer at the property in question. About 4 years back at the property in question, they used to do agricultural activities, besides looking after the animals. At that time there were two people to look after the activities. I know that Mrs. Preminder Kaur had entered into an agreement to sell the property in question with Mr. Nagpal. Mr. Nagpal used to visit Mrs. Preminder Kaur. Mr. Nagpal had once come to the property in Chhota Shimla. But I had never seen him at the property in question. I had no knowledge of demarcation of the land prior to 12th November, 2014. Mr. Nagpal and Mrs. Preminder Kaur had entered into an agreement to sell. Mr. Mohan Lal was present there on demarcating of the land on 12th November, 2014. Mrs. Preminder Kaur had never told me that I should cooperate with Mr. Nagpal whenever he comes. It is incorrect to suggest that I am deposing false because I have been living with her family since my childhood. After the death of Mr. Atwal the property was transferred in the name of Mrs. Preminder Kaur and her son. It is incorrect to suggest that my employer along with myself and others have cut trees

from the property in question gradually one by one. I do not know if Mrs. Preminder Kaur had made effort to sell the property in question in the past. It is true that after felling of the trees the forest department personally had come to the property in question after having come to know of the felling of the trees. The forest department officials had come to the property in question and recorded my statement on 16th/17th November, 2014. Even at this stage I did not call Mrs. Preminder Kaur or her son informing them that the trees have been cut from the property in question. I did not ring up Mrs. Preminder Kaur because police people had told me that some wood have been cut and they were given to the temple of Tara Devi. I did not go around the property in question to see how many trees have been cut, I did not even notice the extent of the cutting of trees in the property in question. I knew the locals of the area of the Tara Devi temple.”

- 74.** Further the witness Mr. Tarsem Lal had deposed that “*though a statement was recorded by the police and forest department, I do not know if the property in question is a green area. I used to talk to Mrs. Mohan quite often sometimes even 2, 3 times. I had called Mr. Nagpal on 16th November, 2012. I did not make that call at the behest of Mrs. Preminder Kaur. I had told Mr. Nagpal that some wood had been cut at the property in question, in respect of which Mr. Nagpal told me that he had not cut any trees and he will look into the matter. And at that time he was not there. I*

had met the driver of Mr. Nagpal at Dharampur and had taken the cell number of Mr. Nagpal from him. I had gone to Dharampur with Mrs. Preminder Kaur. I had gone along with Mrs. Preminder Kaur at the house of Mr. Nagpal at Chandigarh.”

75. The **cross examination** of the witness Mr. Tarsem Lal was resumed on 3rd September, 2015 **by the learned counsel for respondent no. 2 and 3.** It has been deposed by the witness that “on 14th November, 2014 I was in Delphi Cottage in Shimla. On 15th November, 2014 Mr. Mohan Lal had rang up to inform that some forest officers had come to the site. On 16th November, 2014 in the morning I had come to Casalini estate. I had gone by bus. I had walked from Delphi Cottage to Secretariat at Shimla and from there I went by bus to the main bus stand at Shimla, from where I had taken the bus which goes to Tara Devi temple. I had alighted the bus approximately 1 Kms before the temple. The place where I got down has a bus stop for the buses which go to Tara Devi temple. However, there is steep climb where the bus stop is. I had started from Delphi cottage at about 10 AM. I had gone on foot where I got down between 12 to 1:00 and it took me around 15 minutes to reach Casalini estate. This distance may be about 1 Km. and reached Casalini estate between 1:30 to 2:00. At Casalini estate only Mr. Mohan Lal was present. When I reached/ started back at around 4 PM at Casalini estate, the forest officers

came. I was inside the gate when the forest and the police officer came and I asked them to sit down and treated them for tea. There were 2 forest officers and 2 police officers, out of which one was a lady forest officer. My statement was recorded in Casalini estate. They had asked for my mobile No. which I had given to them. The team made inquiry from me that who is the owner of the property but they did not ask for their cell number. However, I did not provide them with their cell number. I did not give the numbers of my owners. I know how to sign my name. I have only one mobile. The mobile set had been provided to me by my owners. It is a dual sim mobile. But I only use one number. It is since one year that I have not used other number that was postpaid connection. I did not pay the bill, therefore, it was disconnected. I do not remember the number of my cell which has been disconnected. I save cell numbers of others in my mobile in short forms and get it saved from other people and not myself. The number of Mr. Nagpal has not been recorded in my cell phone. The number has been written on a slip. I had once made a call to Mr. Nagpal and thereafter destroyed the slip. My cell no. is 08894369286. The earlier number that I had was of BSNL. I had purchased this cell and number. This I had brought from Jammu from Bahu Plaza. This had been registered at Jammu. My Jammu address is C-201, Uttam Nagar, Gandhi Nagar, Jammu. This is a rented accommodation.”

76. The witness Mr. Tarsem Lal further deposed that *“the police and forest officers were there with him for nearly 1 ½ hours. I did not ring up Mrs. Preminder Kaur during the period of 15th November, 2014 to 16th November, 2014. However, Mrs. Preminder Kaur used to call him regularly. When these officers were present, I rang up the person with whom the transaction to sell the land was being finalised. During that period of 1 ½ hour, I did not speak to Mrs. Preminder Kaur. Thereafter, I had gone to Delphi Cottage. I know where is village Anadpur. It is correct that Patwari Khana, where Patwari sits, is also at Anandpur. It is correct that climb for Taradevi Temple starts from Anandpur. At Taradevi where bus terminates, there is a bus stop with large space and number of buses can be parked there. It is correct that stair go down from Taradevi Temple to Shiv Mandir. I do not know if there are other villages like Barog etc. around Anandpur. I do not know the names of the persons who stay at Taradevi Temple.”*

“I can only recognise one person who works at Taradevi Temple. The name of the said person is Prem. The Police Officer had made investigation and question at Casalini Estate and then I was called to the Police Station Boileauganj for further enquiry. I go and stay at Casalini or Delphi cottage as directed by my owners. I do not know Mr. Ravi Anderson who had shown the property to Mr. Nagpal. I had signed the statement which was recorded by the

Authorities at Casalini Estate. I do not keep any accounts of expenditure as Mrs. Preminder Kaur gives the exact amount required for the spending on the Bills. I write whatever expenditure I incurred and showed the same to Mrs. Preminder Kaur. (Witness had stated earlier that he does not write himself because he cannot read his own handwriting). I had signed the statement in Hindi language.”

“It is incorrect to suggest that I am deposing false at the behest of my owners. It is incorrect to suggest that I mainly used to stay at Casalini estate and in fact I am Manager of that Estate (Volunteered) that I am a Cook and I mainly stay at Delphi Cottage.”

“I stayed at Delhi from September, 2014 to November, 2014. Then I came back to Shimla. My statement was recorded in presence of Mr. Mohan Lal at Casalini Estate. I only signed the statement at one place. I do not remember if the signatures of Mr. Mohan Lal were obtained or not in my presence. The Forest Official had come to Casalini estate only once. They did not take me to Vedelina estate. They had also not taken Mr. Mohan Lal to that place. Mr. Mohan Lal did not tell that prior to 15th November, 2014 the Forest Department had come to Casalini estate.”

77. The witness Mr. Tarsem Lal was also **cross examined by the counsel** for respondent no. 1, **State of Himachal Pradesh**. The witness deposed that *“I do not know Mr.*

Praveen Sharma, however I know Mr. Nagpal. There was no incident of theft at Vedelina Estate. The four officers at Casalini had recorded my statement. I had signed my statement. The statement, exhibited as RW-2/M, bears my signature at mark N. I have signed in English (Objected to- to be decided at the time of hearing). The statement of Mr. Mohan Lal was also recorded. It is incorrect to suggest that I am deposing falsely that Mr. Praveen Sharma was not present at the time of recording of our statement and his statement was also recorded by the Officers.”

“I had met Mr. Nagpal along with Mr. Praveen Sharma in a Hotel at Dharampur. I did not go inside the Hotel. Mrs. Preminder Kaur met MR. Nagpal alone there were number of employees of the Hotel there. Upon reaching at that place, I came to know that the Hotel is of Mr. Nagpal. After that meeting, I came to know that land owners had agreed to sell the land to Mr. Nagpal. After that meeting Mr.Nagpal only came once to meet Mrs. Preminder Kaur and I had served tea, etc. No representative of Mr. Nagpal ever ame to meet Mrs. PReminder Kaur in Shimla. I did not ring up Mr. Yashpal about the incident of felling of trees. I do not know where does Mr. Yashpal stay. It is incorrect to suggest that myself and my land owners, Mr. Nagpal all other colluded together to cut the trees as cutting of trees was essential for any construction at the site in question. I do not know for

what purpose that land was being purchased by Mr. Nagpal.”

78. Mr. Amrik Singh Nagpal, the purchaser of the land filed an affidavit (**RW3/1**) as examination in chief. Documents were also annexed with the affidavit which were duly exhibited as R-2/A to R-2/E.

79. Mr. Amrik Singh Nagpal S/o Shri Harbhajan Singh Nagpal, R/O 3008, 35-D, Chandigarh appeared as a witness (RW-3).

He has deposed that *“I tendered my affidavit dated 25.07.2015 as my statement in examination in chief. The affidavit is signed by me and marked (X and X1). The statements made in the affidavit are true to my knowledge and nothing material has concealed therefrom. The affidavit is exhibited RW-3/1. The document annexed with the affidavit have been exhibited as R2/A, to R2/E. In the affidavit exhibited RW3/1 I was shown a photocopy of the Jamabandi of the dealer in relation to the land in question. At the time of the execution of the agreement of sale, the owner Mrs. Preminder Kaur had handed over to me the original Jamabandi duly signed by her. Same is executed as RW3/F.”*

80. The witness Mr. Amrik Singh Nagpal was **cross examined by the learned counsel** appearing for **Mrs. Preminder Kaur** and he deposed that *“I am class 8th pass. Though, I*

belong to village and district Ferozpur, I have never lived there. My main line of business is restaurants and hotels. It is incorrect to suggest that I run a hotel under the name of Moon & Venus. It is incorrect to suggest that the company which runs this hotel, my family is the main shareholder. The English Dhaba in Sector 35-C, Chandigarh is run by me. M/s. Shubham Fun & Food Pvt. Ltd. is my company. It is incorrect to suggest that this second company owns Moon & Venus restaurant also. I know the owners of Moon & Venus restaurant. I do not run a PG business in Chandigarh. It is a rental accommodation provided to any person. The English Dhaba and the accommodation which I provide on rental basis fall within the jurisdiction of Police Station at Sector 36, Chandigarh. I have heard the name of Inspector Ram Dayal. He is the SHO of that police station. I vehemently deny the suggestion that I carry on any brothel business in any part of my business property. It is incorrect to suggest that Inspector Ram Dayal has raided four times on any of my properties. On the contrary he has never raided on any of my properties. It is incorrect to suggest that I have ever been prosecuted for running PG business without registration. I know Mr. Charanjeet Dhillon, Mr. Amit Khanna, Mr. Prince Gulati and Mr. Robin. It is incorrect to suggest that these 4 people have financed any of my properties.”

“I am running a hotel in Dharampur, Himachal Pradesh. It is incorrect to suggest that any ladies were arrested in my

hotel at Dharampur, Himachal Pradesh. I had purchased properties prior to the transaction for the property in question. I have purchased two properties in Chandigarh. My date of birth is 21st April, 1974. In August 2014 I had seen the property in dispute at Taradevi Temple for the first time along with Mr. Bains and Mr. Virik, the property dealers. It is correct to suggest that Mr. Deepak Malhotra, advocate is my friend I had received the notice from Mrs. Preminder Kaur through her counsel. I have seen the said notice on the file of the Tribunal. The same is exhibited RW3/X. I think that the said notice was exhibit of RW3/X was replied by Mr. Deepak Malhotra, on my behalf, RW3/Y.”

“ I have studied Hindi, Punjabi and English also till my education i.e. the 8th class. My affidavit was drafted by my counsel voluntarily under my instructions. Mr. Deepak Malhotra had replied to exhibit RW3/X upon my instructions but, I do not recollect the exact contents as it is quite sometimes back.”

“In August 2014, when I went to the property with the property dealer in question it was 5.30 in the evening. As it was cloudy, I could not see the entire property. After one week, I had again gone there with the property dealers for the property in question. At that time, I had seen the entire property. On that day, there was no clouds. When I went for the second time on the property in question, it was in the same condition as it is today. There was land on which

there was grass and there was old (Banjar) house at the site. There were 5-6 trees on the land in question while on the boundary there were number of trees. I was told by the property dealer that those trees on the land in question have been imported and planted on that land. The trees that I had seen on my earlier visit were in existence when I last saw the land in question. I have not visited the site after dispute between us. I do not know if the trees were cut prior to my purchase. I cannot deny the suggestion that there are stumps of trees on the land in question and some chemical had been poured upon them with an intention to burn the same. On 25th October, 2014 or nearby, I was in abroad. I do not know Mr. Sumit Raj Sharma, advocate in Shimla High Court and I also do not know whether he along with his children had gone to Taradevi Temple and they had come to the site in question and had seen the trees being cut. It is incorrect to suggest that I had awarded a contract to somebody for felling/cutting of the trees at the site in question. I had planned to purchase the said land as a hotel project. I had been told by Mr. Praveen Kumar that there was family dispute in relation to the land in question and that had been settled. Now, they wanted to sell the property. It is incorrect to suggest that in order to implement the hotel project, it was necessary for me to cut the trees. It is for the reason that there were no trees on the land where I had planned to construct the hotel. The hotel at Dharampur,

HP is a leased property. I read it in the newspaper that question was raised in the Vidhan Sabha of State of HP in relation to the cutting of the trees on the site in question. I also read it in the newspaper that Conservator of Forest had been transferred and 5 other officials were suspended in relation to the cutting of trees. It is correct that I had submitted a complaint to the police station at Sector 36, Chandigarh. I had not submitted any affidavit along with my complaint; the same might have been lodged by the police officer concerned. I know Mr. Ravi Anderson who is the property dealer in this transaction. It is incorrect that Mr. Ravi Anderson and Mr. Virik had accompanied me when I went to lodge the complaint. I had mentioned in my complaint that there were no trees on the site in question. Similar averment was also made in the reply RW3/Y. I have again read (witness had been explained the content of para 4, affidavit exhibited RW3/1) the averments made therein are correct. I was informed by the police that my complaint at Sector-36 police station is under investigation. I had gone alone to the police station. The complaint was written by my advocate Mr. Deepak Malhotra. The complaint was read by me and I understood before I signed. I know little bit as to how to operate the computer. I have heard about Google Earth. I do not know if you can get images of Earth through Google Earth. It was on 12th September, 2014, agreement to sell was executed. The land is in the same stage as I saw

the land when I purchased. I do not know whether on 16th September, 2014 no tree has been cut or felled at the site in dispute. They might have been cut or felled prior thereto. It is incorrect to suggest that I had cut these trees to take illegal possession of the land in question. In fact, I had never been given possession of the land. I denied the suggestion that NO trees were cut after 16th September, 2014. I have not seen, if there is any temple of Shri Hanuman Ji below the down-hill of the property in question. It is incorrect to suggest that I got any project report prepared of cable car from that temple up to the property in dispute. It is incorrect to suggest that I had a plan to keep a project train in Timber Trail Resort in HP at the site in dispute. It is incorrect to suggest that I had cut those trees because they were coming in the way of cable car. I do not know if the police station at Sector-36 have closed the investigation. Mr. Praveen Sharma is my employee who joined my service in October, 2014. It is correct to say that Mr. Praveen Sharma and myself were arrested together by HP police in December, 2014. I had filed an application for anticipatory bail in the High Court of HP. The same was dismissed. Thereafter, I have surrendered before the HP police. I know what is the Jamabandi. It gives complete description of the land. In the Jamabandi besides title, the nature of the land is also described. I had sent Mr. Praveen Sharma to get tatima prepared in relation to the land in question. It is incorrect to

suggest that Mr. Praveen Sharma has forged the signatures of Mrs. Preminder Kaur. Mr. Praveen Sharma is not a resident of Shimla, HP. I do not know if Mr. Praveen Sharma is related to the pujari of Taradevi Temple At Shimla. It is incorrect to suggest that Mr. Praveen Sharma had ever gone to the site without my permission or had given wood of the cut trees to the temple. I had got the title search done in relation to the land in question. I had got it done through the local Patwari Officer. I had gone through that Report. I had also checked as to since when the land was in the possession of the family of the seller. In relation to the land in question, there was copy of the Judgement of the High Court of HP, on the record of the Patwari. It was land dispute in which consent decree was passed. I do not know whether any trees have been cut or felled. I also have no knowledge about the same. I do not know if Google Earth is showing any images of the existing trees on the site in question even in October and November, 2014. I am not a resident of H.P. It is correct that permission of the State Government is required, before I or my company could buy the land in HP. I had applied to two departments where dispute arose and NOC was declined. It is incorrect that one has to annex the Project Report along with the application. I have not reached that stage in the present transaction. It is correct that in April, 2015 when the case was listed before the Tribunal at its Circuit bench, at Shimla, I had met Mr.

Atwal as he had called me. It is incorrect to suggest that these people were walking and I was walking behind them. It is incorrect to suggest that at that time I had apologised to Mr. Atwal and said that I had mistakenly cut the trees. Mr. Atwal when he met me on 19th May, 2015 at Delhi had asked me to come to their house and meet his mother. It is incorrect to suggest that I had gone to Gurgaon and I had banged at the doors of Mrs. Preminder Kaur's flat and they did not open the doors. I and my wife had gone to the house of Mrs. Preminder Kaur on 21st May, 2015. It is incorrect to suggest that we were turned away by Security Guard of the building. It is incorrect to suggest that I had deposited 2 cheques of Rs. 2,50,000/- each in the account of Mrs. Preminder Kaur. It is correct that the sum of Rs. 5 lakh was sent to my account through RTGS but, it was without my consent and knowledge. Nearly 20-25 days thereafter, Mrs. Preminder Kaur sent a notice through her lawyer to me to cancel the agreement. I never asked for compromise or negotiations by Mrs. Preminder Kaur. It is incorrect to suggest that I had sent Mr. Ravi Anderson to talk to Mrs. Preminder Kaur. I have already stated that Mr. Anderson does not work for me. Mr. Anderson is a property dealer who might be talking to me on phone, number of times every day. Mr. Praveen Sharma is my employee and I have been talking to him regularly during October and November. He is no longer my employee.”

81. The witness Mr. Amrik Singh Nagpal was **cross examined** by the **counsel for State of HP** and he deposed that *“the cheques referred to in my affidavit were collected by the seller and deposited in their account at para 10. Mr. Praveen Sharma was expected to collect the documents on my behalf in relation to the transaction in question. I know Mr. Tarsem Lal. He rang me up for the first time on 16th November, 2011. Mr. Tarsem Lal told me that the trees have been cut. Nobody else rang me up for felling/cutting of trees. After knowing it from Mr. Tarsem Lal, I had tried to contact to seller but, they did not take my calls. I had gone to Shimla in the end of November, 2014 after having come to know about cutting of trees. I went to the site in question and met Mr. Tarsem Lal with Mr. Mohan Lal. There was nobody else on the site at that time.”*

82. Ms. Richa Banchta W/o Mr. Rajesh Banchta R/o Village Shantha, Tehsil-Chopal, Dist. Shimla appeared as a **Court witness (SW-1)**.

She has deposed that *“I am working as a Range Forest Officer in the Department of Forest, in the State of Himachal Pradesh, since 2005. I had visited the site in question in June 2014. I had gone for checking forest fire in that area. No complaint has been received by me and by my department for cutting/felling of trees prior to November, 2014. DFO, Shimla had made a complaint to me. This complaint was made to me on 14th November, 2014. I was in*

a meeting when I received the complaint. Immediately after receiving the complaint, I have directed the staff (Block Forest Officer) working under me to go to the place where the trees had been cut on that site. My staff had rung me up late in the evening from the site in question. They informed me that trees have been cut at the site. Next day I had also directed them to lodge a Police Complaint. On 15th November, 2014, I went to the site in question near Tara Devi Temple. Block staff of the Department consisting of Block Officer, Forest Guard and also Assistant Conservator of Forest had gone to the site on that day. When we reached at the site nobody was present at that site. We prepared a report. On 16th November, 2014, we recorded statement of the witnesses at the site in question and thereafter we had prepared a report. I have seen the photocopy of the report that I had submitted on 19th November, 2014. The same bears my signature as marked 'X'. I have submitted the original copy of this report to DFO, Shimla and the same is Exhibit SW1/A. The statements of the witnesses as annexed to this report were recorded by the Forest Guard in my presence. The statements have been recorded by Ms. Nisha Sharama, Forest Guard whom I had seen writing the statement. I am identifying the statements which has been written and the same are as Exhibit SW1/B&C.”

“Mr. Kundan Lal, Block Forest Officer had gone to the Police Station to lodge the report on 14th November, 2014.

When we visited the site on 16th November, 2014, Police was also accompanying us. On 16th November, 2014 we went to the house of the owner of the Property. Mr. Mohan Lal, Mali and Mr. Tarsem Lal, Cook were present there. Mr. Praveen Sharma whom I know had come to the site after sometime. After recording the statement we had started counting the stumps of trees. This process continued till 17th November, 2014. We also made investigation from the people who were living in the Temple. We had measured the width of the stump and noticed the species as well. On 15th November, 2014 we have seized the Baan Fuel wood which have been kept in the Temple. We had taken photographs of the fuel wood lying in the Temple premises. The photographs show that the wood have been cut. I had taken these photographs with my digital camera having a memory chip. I have not brought today the memory chip. The photographs taken by me, are Exhibit SW1/D. I have taken the site photographs from the Chip, and had got the print of these photographs in question. The print was taken from the Chip and is not tempered in any manner whatsoever. The fire wood assessed was 82.5 cubic meters. The trees that were cut and fire fuel recovered were 15 to 20 years old. The eight Devdaar trees that were cut would be aged 80 years or more. There were 425 Baan Trees and remaining were other species. The trees that were cut/ felled were in the private land, though surrounded by the forest land of the

Government. There was also a fence demarcating the two portions. No application had been moved by any person for seeking permission to cut the trees. Department had also not received any complaint that there had been theft of wood from the site in question. The persons who went to cut the trees on a private land need to seek permission under the provisions of Land Preservation Act, 1978. The Range Forest Officers can give permission for felling of 10 (5 in case of coniferous) for bonafide domestic use. The higher number of felling of trees is to be considered by the Higher Authority. The Chief Conservator of Forest under this Act, can give permission to cut unlimited number of trees and such permission, shall not be for more than 30% of the total covered forest area in a given case. For bonafide domestic use, a person can cut three Coniferous trees and five Broad leaf trees even without permission. Before the incident of cutting of trees occurred, I did not know the owner of the land. On 14th November, 2014, when the officer found the cut trees at the site I had gone to lodge FIR. But the Police did not lodge FIR on the plea that the Forest Department is to obtain permission. However, Police recorded statement on 21st November, 2014. My statements and the statements of other forest officials were recorded by the Police. In my presence, statements of Block Forest Officer and Forest Guards were recorded. The statements were recorded in the Police Station. After lodging of the FIR, Forest Department

did not take any action. In the meanwhile, I was also transferred from my post.”

- 83.** The witness Ms. Richa Banchta was **cross examined** by the Learned **Counsel for Mrs. Preminder Kaur** and she deposed that *“the Range Forest Officer Shoghi section, a Block Officer, 1 Forest Guard and the Guard were working under me. My job is multifarious. I have to go in the field as well as work in the office also. Normally patrolling is done by Forest Guards. Range Officer goes for patrolling occasionally. Patrolling is also done by the Block Officer. Employees of the Forest Department who are responsible for patrolling have to cover lot of area and they will go to a particular site in rotation or when they receive any complaint. Besides this, Guards also have duties related to development works. I cannot say exactly as to how many days a Forest Guard would visit particular area. It all depends upon the facts, whether department had plantation in that area or not. I have been working in this department for the last 10 years. I have done Ph.D. in Forestry. I have seen many cut trees. It is correct to say that one tree particularly like Baan tree, multiple Coppage appears on the stem of the tree. It is correct that when a tree is cut a cross displays three distinct features Phloem, Xylem and Pith. It is correct that the copies arise only from a portion. It is also correct that Xylem is a water channel. It is correct that there is a possibility of Moss and Lichens growth on the cut tree, if*

it was cut quite some time back. At the site in question I found all the trees have been recently cut. I have not seen Copies at the site in question. I am not aware whether department have written any letter when the copies have started and it has appeared in 2015. The boundary wall is of lower height and may be approximately two feet in height. At one or two places the side wall is damaged. I am not aware whether department has left any barbed wire at the site in question. When we examined the trees at the site in question, after removing the mud from the stems I can say it was cut 10 to 15 days prior to the date of my inspection. This I am saying on the basis of the fact that they were stem of freshly cut trees. I have myself seen the cut wood lying on the premises of the temple. Upon enquiry been made from the managements of the temple, we were informed that the wood have been given to them as a charity. When we were talking to Mr. Tarsem Lal at the house of the owner as afore-stated, he received a call from Mr. Praveen Sharma. Later on Mr. Praveen Sharma came to the Block Office of the Department, of Tara Devi. The Tarsem Lal when received phone call from Mr. Praveen Sharma had met the Forest Guard speaking to Mr. Praveen Sharma but then came to our Block Office in the evening.”

84. Cross examination by the Learned **Counsel** Mr. Aditya Dhawan appearing **for Mr. Nagpal.**

“DFO had received the complaint on telephone, and he informed him, that I was in the meeting. From my phone, then I rang up the Block Forest Officer on 14th November, 2014. Block Officer, Forest Officer and two Forest Guards had gone to the site in question. They reached at the site in question at 04:00 PM. A movement diary was maintained by the Guard, on duty. From the said diary the movement in relation to place and time can be known. I had gone to the site for the first time on 15th November, 2014. We have entered the site from the side of the temple and wood stored there, was visible. It was in the shape of fuel wood. The stored fuel wood in the form of stems was also fresh at the site. The wood cut from the site in question were of the same species. Lops & Top Confier can also be used as fire wood. From 15th November, 2014 to 17th November, 2014 we inspected the forest area, and no other tree have been found cut. The entire wood has been recovered by the Forest Department. Part of it was lying in the premises of the Tara Devi Temple, while the other was recovered by the Forest Department from other places. I was not the member of the team which recovered the wood. However, later on it came to my knowledge. I cannot say with certainty, but the wood might have been recovered from the nalas near Raghaga Chatoli Dasholi. The Pujari of the Temple and other persons who were working in the temple belong to the village. I cannot say, if the recovery was made from the villagers of

Preminder Kaur who was coming at the temple. On the basis of measurement of the stem we had calculated the volume of the wood. The trees at the site in question are not cylindrical and are tapering or crooked. It is correct that volume is measured on the basis of breadth height which was 1.37 meter. The volume that I have assessed may not be exact. We did not examine the trees nearby the place from where the trees have been cut, to find out their possible volume. It is correct that when a tree is cut right on the ground level, then for determining the volume, we sometimes make reference of the adjacent trees. Scientifically it was possible to precisely determine whether the wood that was recovered was that of a stem of wood found at the site in question. No such study was conducted. On 16th November, 2014 we reached at the site at 12:30 PM. We reached in the morning at the house of owner and at the site at 12:30 PM. There were two Police Officers with us. At the house we stayed for an hour. Then we came to Tara Devi Temple. Mr Tarsem Lal was moving around when we were at the house. However, Mr. Mohan Lal was not present before us. Mr Tarsem Lal had made call during our stay at the house. We had asked Mr Tarsem Lal the name of the owner and he did not furnish the said information and he stated that he is not possessed of the same. It is not necessary that damage report is to be issued at the site itself. It is not necessary for the department to issue the damage report immediately after

they came to know the cutting of the trees. The damage report is in the hand-writing of the Forest Guard and he is the only competent persons to issue the same. Mr. Praveen Sharma had come to the Block Office of Tara Devi and his statement was recorded there and he had signed the same. It is incorrect to suggest that signature of Mr. Praveen Sharma were obtained on 16th itself. It is also incorrect to suggest that the damage report was handed over to Mr. Praveen Sharma on 20th November, 2014. There are two seasons for growth of the trees-Spring season and Rainy season. It will depend on the climatic condition as to how fast the blackening of the cut wood, would take place. It is even possible that the blackening of the trees may appear 6 to 8 months even in the climate at Shimla. From seeing the stems, I could say the trees had been cut recently. No scientific study was done for that purpose. I am aware that under Section 118 permission is required to be taken by an outsider for buying property in Himachal Pradesh. The first step in that direction is to obtain, essentially certificate. For obtaining an essentiality certificate, one needs to obtain NOC from the Department. It is not necessary to annex project report while applying for NOC. But the land revenue papers need to be annexed. Kanoongo prepares the tatima. It is correct that while applying for NOC, site plan tatima showing the content of the plan prepared by the kanoongo is to be annexed. It is correct that Mr. Praveen Sharma never

referred to Mr. Nagpal, while the statement was recorded. Mr. Praveen Sharma had informed me that he is the consultant to Mrs. Preminder Kaur. When we were recording the statement of Mr. Praveen Sharma, he did not receive any call. The procedure to be followed in Government Land and private land is different. It is correct that we have not mentioned that one Baan tree was found cut from the Government Land. It is correct that there was certain portion of the land in the shape of agriculture field. There were no trees found to be cut. Most of the trees which were covered with the mud were found at the fringe of the agricultural land in question. There is no notification of the Government declaring the Tara Devi area as "Proposed Green Area". I do not know if Mr. Nagpal had applied for any NOC which was declined by the Department vide letter dated 28th September, 2014. I had not seen the Revenue papers of the site in question. I had recorded the statement of Mr. Tarsem Lal and others only once. Classification of the trees is normally done on the basis of diameter of the tree. It is not correct that the class of felled trees is recorded one class less than the surrounding trees. The statements of Mr. Prem Thakur, Cook and Mr. Nand Lal, employee at the temple, were also recorded by us. The trustees of the temple are also from the nearby villages."

85. The learned **counsel for the Forest Department** was **allowed to re-exam** the witness. The witness deposed that

“we had made enquiries from the staff of the temple as to who has given the fire wood in charity. However, they did not disclose the name of the person who had given that charity”.

86. The witness **Richa Banchta** was thereafter put in **question by the Court**. In reply to the same she submitted.

“477 trees of different species, as I have already stated in my statement, were cut in the site in question. To cut these 477 trees by mechanical process at least two days are required 82.5 cubic meter fire wood was recovered from the temple premises. I do not know whether the remaining woods have been fully recovered or not as I have been transferred thereafter. Mr. Lal Singh, Range Forest Officer had taken the charge from me. He had taken charge on 24th November, 2014. In the surrounding area as well as surrounding forest area, we attempted to recover the remaining cut wood. But we could not find them. Upon measuring the stem and applying the formula, it is expected that nearly 21 cubic meter of Deodar tree could not be recovered. The total wood cut, would be approximately 102 cubic meters as per the estimation. Market value of Deodar tree was Rs. 55,905 per cubic meter during that period. The value of ban tree was Rs. 18,000 per cubic meter and other cut species were of the value of Rs. 3,885 per cubic meter broadly. This was for the year 2014-2015. According to my

rough calculation, the value of cut trees is Rs. 30, 24,594.30/-.”

“The age of the ban trees was 20-25 years while that of the Deodar tree 60-80 years. The Ban trees have to be looked after, from the plantation of the saplings, for a period of 10 years at least. The Deodar trees similarly require to be looked after for 10 to 20 years. The area where the tree is to be planted should be free from any interference including biotic interference. Saplings of Ban trees would be costing Rs. 10 to 20 while the Deodar was Rs. 15 to 25. This is an approximate cost. The Deodar saplings are available with difficulty. At least 4 to 5 Maalis and other forest staff would be needed to plant and ensure survival of the trees as ordered by the Tribunal. Seedling would be converted into saplings which require immense care of the area and the saplings. Survival rate of Ban tree is comparatively less because of looping and grazing pressure. This is in addition to the maintenance of the survival rate of the trees. If any sapling dies then it requires instant substitution. In case of ban trees, the survival rate is 60 to 70 per cent while in the case of Deodar trees the survival rate is 70 to 80 per cent.”

“The minimum figure of Rs. 24 lakhs and odd, given by the Chief Conservator in the affidavit filed is the correct figure i.e. the minimum amount required just for plantation of the requisite number of saplings. The area in question was a dense forest. I stated as a dense forest, as forest was there

in between the pieces of agricultural land. The net value of Dense forest is Rs. 8,97,000/- per hectare.”

87. Ms. Nisha Sharma W/o Mr. Sanjeev Sharma, C/o Shastri Niwas, Mohari, Kuftadhar, Shoghi, Himachal Pradesh also appeared **as a court witness (SW-2)** before the Tribunal on 19th October, 2015. She submitted that *“during the cutting of trees at Taradevi Temple, I was working as a Forest Guard, Shoghi Block. I am a Graduate. I was doing my rounds with the NH 4 lane Survey at U-214 Bodhogyan, the forest area when Block Forest Officer, Shoghi has rang me up and informed me about this incidence of 14th November, 2014. At about 04.00 to 4.30 PM, I had reached the site at Taradevi Temple. I had gone all alone and when I reached the site, the Block Officer, Shoghi was present at the site. It was getting dark as it was winters. At the site we noticed stumps of the cut trees. We informed the Higher Authorities including the Range Forest Officer and Divisional officer (DFO). We were directed by the Senior Officer to lodge a report at Boileauganj Police Station. We went to Boileauganj Police Station to lodge a report. On 15th November, 2014, we went to site again and found that the cut wood was lying near the Taradevi Temple and we sealed it. Then we went to Kothi Casalini Estate, there we met one person by the name of Mr. Mohan Lal. Mr. Mohan Lal told us that he was working as a Mali with the owners of the land and when we asked him about cutting of trees, he said that he do not*

know much about it, one Mr. Tarsem Lal looks after the affairs of that Estate. Mr. Mohan gave us the cell number of Mr. Tarsem Lal, whom we spoke to and he then fixed the date of meeting at the site on 16th November, 2014. On 15th afternoon our Senior Officer had come to spot and told us to do the counting of cut trees. We had started counting of the cut trees on 15th November, 2014. On 16th November, 2014, when we went to the site, the Police and other Officers had already come on the site and we continued to count the wood stems at site. On that date, we recorded the statement of Mr. Tarsem Lal. Mr. Tarsem Lal received a call during that period on his cell-phone. He requested me to speak to the person, who had made call to Mr. Tarsem Lal. The said person told his name Mr. Praveen Sharma and he informed that he was a caretaker of Mrs. Preminder Kaur. Since Mrs. Preminder Kaur did not come to the site till evening and then he was called at Block Office, Taradevi Temple. Mr. Praveen Sharma came to the office at around 7:00 PM on 16th November, 2014 then his statement was recorded there. Police Officials were also there. Mr. Praveen Sharma also stated that he does not know who have cut the trees. He also said that when demarcation was done at the site in question on 12th November, 2014, he was also present along with the Revenue Officials. On the evening of 17th November, 2014, we submitted a final list of the stumps with the species along with the measurements thereof. On 20th

November, 2014, I was transferred, changed my Head Quarter. Thereafter, I do not know what happened in the case. I have not recovered any other wood except the wood which we had sealed, were lying at the Taradevi Temple.”

88. The witness Ms. Nisha Sharma was **cross examined by** the learned **counsel** appearing **for Mrs. Preminder Kaur**. The said witness deposed during the cross examination that “I had not taken round of the site. It is a reserved forest and had not habitation around it. Normally, we visit the site/ area after 15-20 days. Since, we had received complaint, already we had gone to the specific site on 14th November, 2014 and seen area around there only. As per my report, 477 numbers of trees have been cut, which I had counted. Since these trees were cut by a Power Chains Saw and it would have been taken at least 2 days or so to cut these trees. The trees were not cut in my presence. I say so for the reason that the trees were cut right at the ground level which can only be done by a mechanical saw. It took us around 20-25 minutes going from spot to Casalini Estate. The distance between these two places is round about 600 mts. This is normal time which one would take to walk such distance. On 15th November, 2014 when I went to site, I along with the Block Officer, Shoghi, two Beat Guards of the same block. In all we were four. Then on 16th November, 2014, I went to the site, I was accompanied by the Range Forest Officer, Mashobra and Block Officer, Shoghi and two

Police Officers. I had spoken to Mr. Praveen Sharma when he was called at the request of Mr. Tarsem Lal. I was junior-most person of the officials who had gone to the site in question. From the site inspection, it appeared that the trees might have been cut 14-15 days back.”

- 89.** The witness Ms. Nisha Sharma was **further cross examined by the counsel for the respondent no. 3 and 4** wherein she deposed that *“I am Forest Guard since 2007. I have attended various training programmes in my department. I have handled or have been part of the investigation in number of forest offences. It is correct that we work as per the forest manual. Forest Guards post is not a technical post. I reached the spot on 14th November, 2014 after 03:30 to 04:00 P.M. I reached the spot alone, the other forest officials had already reached there. After reaching the spot, since it was winter and it got dark early we rang up senior officer, DFO, Shimla and took the instructions and lodged FIR with the police. On 14th November, 2014, we did not seize any wood. On 14th November, 2014, we did not look for the wood. We remained on the site for nearly an hour and then went to the Police Station. On 15th November, 2015, we went to the site via Tara Devi Temple, since there is the way from that side as well. It was in the morning. We made efforts to find out, who had cut the trees and then we went to Casalini Estate as well. We met with Mr. Mohan Lal there. We searched the estate to find out if there is any tree.*

We did not prepare any document in regard to this investigation. I am not familiar of the Volume-IV of the manual. We did not send any report to Numberdar or Gram Panchayat of the Village. It is correct that office of the Gram Panchayat is on the way to Tara Devi Temple. We did not report to Gram Panchayat on 14th, 15th and 16th November, 2014. Damage report can be issued in the subsequent stage after investigation. It is incorrect to suggest that damage report has to be issued at the spot and at the very first instance. We also did not make any report of the wood that was found at the Tara Devi Temple to the Panchayat. We carried out instruction which were given to us by our seniors. Mr. Mohan Lal told us that the land is of Mrs. Preminder Kaur where the trees were cut. The land belongs to Mrs. Preminder Kaur. Mr. Mohan Lal had declined to get the statement recorded by saying that he was not aware much about it and Mr. Tarsem Lal was the person who is familiar and manages the property. We had asked for phone number of Mrs. Preminder Kaur, but neither Mr. Mohan Lal nor Mr. Tarsem Lal gave us that number. They refused to give the number and stated that she rang them from various numbers. There is no entry made in the record showing places that are visited by the officers of the forests departments. There is no tour diary of forest guard. When we go for patrolling other members of the department are also with us. For planting of trees, entries are made in the

Plantation Journal. It is incorrect to suggest that on November 14, 2014 we were carrying on plantation in the area around the site in question. The Baan wood is used for fuel and fodder while Deodar is used for different purposes. I had recorded the statement of Mr. Tarsem Lal on 16th November, 2014 in my hand writing. The volume of the trees was calculated by my seniors as I am not aware about it. There is no bus stop at the place where the motorable road goes to the Casalini Estate. Even the Police Officer had asked for phone number of Mrs. Preminder Kaur, but Mr. Tarsem Lal did not give her number.”

“When I was recording the statement of Mr. Tarsem Lal a call on his phone has been received from Mr. Praveen Sharma. He had asked us, where he should meet. Then Mr. Praveen Sharma’s statement was recorded in Block Office, Tare Devi. Mr. Tarsem Lal was talking on phone on number of occasions, but we do not know to whom he was speaking. Mr. Tarsem Lal had signed the statement in my presence. Mr. Tarsem Lal never told us that he is illiterate and sign it. The Taseli Gaon does not exist. Chadoli & Raghawan are the villages in this Forest Beat. I do not know about the recovery of wood as it was done after I was transferred. It is correct that various people working in the Tara Devi Temple and even the Pujari, belongs to these villages. Mr. Praveen Sharma had told me that he has visited the site in question twice. There were 7-8 people from Forest Department and

Police Officials were also present when I recorded the statement of Mr. Praveen Sharma. I do not remember if the Police Officials also had recorded the statement of Mr. Praveen Sharma at that time. It is incorrect that the damage report is issued by me on 16th November, 2014, in fact it was issued on 20th November, 2014 and it was signed by Mr. Praveen Sharma. Mr. Prem Kumar is a Cook at the Tara Devi Temple and we had also recorded his statement. I have not brought a copy of the statement today, however it has been filed on record. I do not know what formalities are to be completed to the Non-Himachali to buy a property in Himachal Pradesh. It is correct the NOC from the Forest Department is required and is placed on record. I do not know if applicant is required to submit the Project Report or not while applying for NOC from the Forest Department. We came to know that one tree had been cut from the Forest Land of the Government after the demarcation of the property is made, which was done after my transfer. We had tried to give a Spurdhari the recovered wood, however employees of the temple refused to take it. I do not know that in whose possession the wood is as of today. It is incorrect to suggest that I am making statements just to save myself and other officials of the Forest Department.”

90. Mr. Ajeet Singh, S/o Shri Shiv Singh, **Assistant Sub-Inspector** at Police Station, West, Shimla District Shimla, Himachal Pradesh had appeared as Court **witness (SW-3)**

on 18.12.2015. He has deposed that *“I tender in evidence my affidavit dated 11.12.2015 which is signed by me and marked as ‘A’ and ‘A1’. The statement made in the affidavit are true and correct to the best of my knowledge as given for official record and otherwise information received, the same is exhibit as SW-3/1. The documents annexed to this affidavit are being marked as annexure ‘A1’ to ‘A16’ which are the copies of the original documents. Annexures are part of my affidavit and to be read as part of my statement.”*

On cross examination by the learned Counsel for **respondent no. 3 & 4**, the said witness deposed that *“I was posted as ASI at Baluganj Police Station, since 5th November, 2014. On 14.11.2014, I was in the Police Station. It is correct that the movement of all the police officers are recorded in the Rojnamcha. On 14th November, 2014 I was on duty for the whole day. None of the Forest Officer had come to the Police Station in my presence in the evening of 14th November, 2014 to complain about cutting of trees. In the night of 14th November, 2014 I came to know that such a complaint had been filed in the Police Station. On 16th November, 2014 along with Forest Officer I went to the site. It is correct that on 15th November, 2014 no steps were taken by me on the basis of that complaint. I started from Police Station in the morning around about 10:00 to 10:30 AM for the site in question. That day myself and one Constable Mr. Lokender Singh had gone to the site. Mr. Lokender Singh,*

Constable No. 440 was with me. We had gone to Tara Devi Temple by car. It was a private vehicle. I do not know that whose vehicle was that. The Forest Guard Ms. Nisha Sharma and one Range Officer met us at the Tara Devi Temple. From the temple we went to the site where the trees were alleged to have been cut. At that site nobody was present. We remained at the site for more than half an hour. Forest Officer told me that this land was of Mrs. Preminder Kaur. I do not remember if it was 11:00 AM when I was at the site, but it was day time. From there we went to the residence of Mrs. Preminder Kaur. Nearly 6 people were there when we went to the residence of Mrs. Preminder Kaur. At the residence of Mrs. Preminder Kaur, we met Mr. Tarsem Lal, Cook and Mr. Mohan Lal, Mali. We were there for nearly an hour. We all were together for nearly one hour. Mr. Tarsem Lal and Mr. Mohan Lal had told us that they do not know the phone number of Mrs. Preminder Kaur, Ms. Nisha Sharma, Forest Guard had recorded the statement of these persons when I was present. Mr. Tarsem Lal had received a call on his cell phone and he was asked by Ms. Nisha Sharma to talk on the cell phone in my presence. During the time I was there at the residence of Mr. Tarsem Lal and Mr. Mohan Lal who were moving around here and there as well. I had not carried out any other investigation except asking phone numbers from these persons. We had not registered any case on the basis of complaint because no

case was made out. However, I have not made any reference to that effect in my Affidavit which is placed before the Tribunal today. I have brought the case file today where I have recorded. Vide letter dated 20th April 2014 which could read as 20th November, 2014. The SHO, Baluganj had written to the Forest Officer, Shoghi, Shimla, stating that the Police could not take any action as the trees were fell on the private property without the permission of the Competent Authority. The same is Exhibit as 'SW3/2'. On 20th November, 2014, the SHO was present before the Tribunal and its Circuit Bench at Shimla, when the National Green Tribunal, had issued Suo-moto Notice. On 21st November, 2014 an FIR was registered. Forest Department had submitted a separate Application on 21st November, 2014 and on the basis of which FIR, was registered. No other investigation or proceedings had been carried out at the site in question of Preminder Kaur by me and the Forest Department. Around 02:30 PM we had left Casalini Estate. On 16th November, 2014 I had made investigation from Cook of the Temple and Store Keeper whose name I do not remember. Myself and Forest Officials had gone to Tara Devi Temple, from there to Casalini Estate and from there we went to Shoghi. We waited for Mr. Praveen Sharma as we were informed that he is coming. Mr. Praveen Sharma reached at Shoghi about 06:30 PM. The person who is called to the Police Station whose statement was recorded or the

investigation was carried out and the same is entered in the Jimni and maintained in the Police Station. There are two copies of the Jimni, one is kept to the Police Station other is sent to the Superintendent of Police. I do not remember where was I for the entire day on 24th November, 2014, however I could say after seeing the file (Witness is shown the file). I cannot say exactly what I was doing, but I might be busy in some work in the Police Station (Witness have said after seeing the file). I do not know if Mr. Fateh Singh Atwal S/o Mrs. Preminder Kaur along with his Lawyer had come to the Police Station to lodge a complaint. I had seen the copy of that complaint. We have received this complaint on 26th November, 2014 through the office of the Superintendent of Police. myself and SHO had not shown copy of the Application for demarcation to Mr. Atwal and his Lawyer at the Police Station. In the case of 420 it is the dishonesty which is considered at the time of registering the FIR. It is correct that dishonesty has to be with the intention to cause loss to the other person. It is also correct that even in the case of forgery the FIR is registered, once there is a loss caused to the other side. It is correct that Jamabandi for the site in question does not reflect the existence of a forest or trees at the site in question. On 21st November, 2014 I had conducted inspection with the Forest Department where we had gone to the site to prepare a site plan, and measures the trees. It is an open land. After seeing the trunk of cut

trees at the site we had come to the conclusion that they have been cut mechanically by a Power Saw. I had not got any scientific test done during my investigation to find out as to when exactly the trees were cut, however they have been cut 20 to 25 days earlier. Mr. Praveen Sharma was called on 29th November, 2014. I had never summoned Mr. Nagpal, however when I was on leave the other investigating officer had called Mr. Nagpal. It is correct that I have found some wood cut at the premises of the Temple. I have not got any search operation done for finding out the remaining cut wood; however the Forest Department had done the same. It is correct that cut wood was found by the Forest Department in the nearby villages i.e. namely of Raghaon, Dasheli and Chaudauli. I cannot say that the Cook and other person stay in the temple itself in the night. It is correct that Cook in the Temple belongs to the village, Raghaon. The Pujari of the Temple is from the adjoining villages as named above. It is correct that for buying of land/agricultural land in Himachal Pradesh by a non-Himachali permission under section 118 of the Himachal Pradesh Land Revenue Act, 1972 is to be obtained. I do not know if it is necessary to procure essentiality certificate for such permission. I do not know if it is necessary to obtain the demarcation report for submitting such an application. I never called Mrs. Preminder Kaur for investigation at the Police Station. She was involved in the investigation only once as per the file.

Her statement was recorded at Delphi Cottage. She was never called in the Police Station. I did not asked for CDR details of cell phones for the persons (Mrs. Preminder Kaur, Mr. Tarsem Lal and Mr. Mohan Lal who were investigated in the case. After registering case on 21st November, 2014 I had called Mr. Tarsem Lal for recording of statement, but he did not come. I had taken a specimen signature of Mr. Praveen Sharma and have sent for opinion of writing expert. However, specimen signature of Mrs. Preminder Kaur were never sent to any writing expert. It is correct that Kanoongo had recorded the statement of Mrs. Preminder Kaur. In furtherance of the application dated 27th October, 2014 but he did not get a specimen signature of Mrs. Preminder Kaur. The statement had been recorded in the hand writing of the Kanoongo. It is correct that Mr. Nagpal had given me the copy when he was under arrest. I was present on 16th November, 2014 when statement of Mr. Praveen Sharma was recorded by the Forest Official and other proceedings had taken place. I have never included Mr. Bains, Mr. Virik and Mr. Ravi Anderson in my investigation. I did not see the copy of the agreement for the land. It was taken on record by the other Police Officer when I was on leave. It is incorrect that I had not conducted the investigation in a fair manner. It is also incorrect to suggest that the investigation was conducted at the behest of Mrs. Preminder Kaur. It is incorrect that a false case had been registered against Mr.

Praveen Sharma and Mr. Amrik Singh Nagpal. It is also incorrect that I am giving this statement to protect the forest officials and to support my case and therefore, improper investigation had been conducted by me.”

91. The witness Mr. Ajit Singh was **further crossed examined** by the Learned **Counsel for Mrs. Preminder Kaur** whereby he deposed that *“I have served the Police Department as Constable. I am an ASI as of now. It is correct that Officer thinks and Constable only take instructions. It is correct that we conduct some preliminary investigation before registering a FIR. It is incorrect to suggest that till the time there is some proof. We do not enter/register any FIR. Whenever we get information of serious offense we register the FIR. Whenever we get information of serious offence we register the FIR. It is correct that Mr. Nagpal had filed an application of anticipatory bail before the Session Court at Shimla. I was not present in the court when the application for anticipatory was argued. I have no knowledge if Public Prosecutor was directed to oppose the bail application. Bail application was dismissed. It is incorrect to suggest that I had taken CDR of phone call of Mr. Nagpal and Mr. Praveen Sharma. I had joined my duty after leave on 22nd December, 2014. After disposal of the anticipatory bail application, teams were constituted to trace Mr. Nagpal they had gone to the residence as well. It is not correct to suggest that I have*

taken out the record of cell phone of Mr. Nagpal they had gone to the residence as well. It is not correct to suggest that I have taken out the record of cell phone of Mr. Nagpal to trace his location. After seeing the police file, witness states that it contains the cell phone records of Mr. Praveen Sharma. Similarly cell phone records of Mr. Nagpal is also there in the file. The cell phone records are Exhibit as SW 'X' and "Y" respectively. The three names shown in the first page of my Affidavit Exhibit 'SW 3/1' are the names of the accused persons. Third accused is Mr. Jai Pal Chauhan I came to know about him when he was arrested. I have never said that Mrs. Preminder Kaur had made a statement before the Kanoongo who is Mr. Jai Pal Chauhan. The Department of Police normally get signed the statement by the person, whose statement is recorded except under section 161 is recorded. During my investigation, I do not know that Mrs. Preminder Kaur had gone to Kanoongo to make statement. The name written on the document marked Exhibit 'SW 3/z' made of Mrs. Preminder Kaur. The matter in relation to submission of application of demarcation of land was referred to State Forensic Laboratory, Himachal Pradesh. It was found that signatures on applications were of the same person. I have no knowledge, if the house of Finghas is of Mrs. Preminder Kaur or her Lawyer. I am not aware, when the statement of Mrs. Preminder Kaur was recorded, as it was recorded by some other officer. I have not filed any

status report in the court while it has been submitted by the Superintendent of Police. It is true that the report is submitted to the court after due deliberation.”

92. Learned **Amicus Curie** has **argued** that the Tribunal had taken Suo Moto cognisance of cutting of trees near Tara Devi temple and issued notices to the authorities. Later, it was revealed that the land from where the trees had felled was owned by Mrs. Preminder Kaur who had entered into an agreement of sale, on 12.09.2014 with Pristine Hotels and Resorts Pvt. Ltd through its Director Mr. Amrik Singh Nagpal. The status report was filed by the Superintendent of Police, Shimla as well as the forest department of the State of Himachal Pradesh, which were taken on record. The Tribunal ordered that it is stated on behalf of the State of Himachal Pradesh, that the area in question is the land adjoining the reserve forest. It is also confirmed that the trees have been felled illegally, unathorizedly and without permission of any of the competent authorities. It is also stated that some of the trees have been felled in the Government land. In the report, it has been indicated that the value of the wood is about 35 lakhs and that there is possibility of the stumps of the Baan trees to revive and re grow. Efforts can be made to revive as many as 426 Baan trees stumps. However, for the remaining, reforestation would be required.

93. On 8th January, 2015 the Tribunal directed Mrs. Preminder Kaur to deposit a sum of Rs. 20 lakhs as an initial payment of damages and costs towards restoration. This amount would be subject to the final orders that may be passed by the Tribunal in relation to the extent and whose responsibility it would be. The cost of entire reforestation was to be borne by the owner. Mr. Nagpal and such other person who are found to have cut the trees. On 9th March, 2015 State of Himachal Pradesh and the Forest Department were directed to submit a complete plan for reforestation. The forest department's calculation of Rs. 24 lakhs (Chief Conservator of Forest and Statement of Richa Banchta the then Range Officer) is the minimum required just for plantation of the requisite number of saplings. It is also submitted by the Amicus Curiae that he has perused the statements made by all the respondents. It is clear that the trees were cut through a mechanical process.

94. Further, it is submitted by the learned Amicus Curiae that permission to cut trees on private land is granted under the provisions of the Land Preservation Act, 1978. No such permission was granted in this case. The land where the felling took place was adjoining to the Government forest, as was of the same class of trees. It needs to be investigated as to how 477 trees of varying age could have been felled by mechanical process without the knowledge of the forest department. The number of trees felled is not in

a small quantity but large sized trees which even through a mechanical process, would have taken days.

95. It has been submitted by Amicus Curie in respect of Mr. Fateh Singh Atwal, a person who is in exclusive possession from the date of purchase, that from the statement recorded there is no plausible reason given, as to why Mr. Atwal came to know only through the internet on the 21st of November, 2014 that the felling of trees had taken place whereas the complaint was registered on 14th November, 2014. Further he has submitted that there were 3 staff members, the Manager, Attendant and a Gardner. It is stated that he used to speak to his staff 'not quite often'. It has been submitted by Amicus Curie that this does not mean that there was no communication, though the staff had mobile phone. It was only through internet that the information of felling of trees was known. According to him this prima facie seems doubtful, given the enormity of the felling.

96. With regard to Mrs. Preminder Kaur the Learned Amicus Curie has submitted that as per affidavit dated 6th January, 2015 it is only on the 21st of November, 2014, through the internet and media reports, she came to know about the felling of trees. Mr. Amrik Singh Nagpal has stated that he is not aware of the felling nor he has cut trees since he has not been given possession of the land.

97. The **Learned Counsel for Mrs. Preminder Kaur** has **submitted** that an agreement was entered by Mrs. Preminder Kaur to sell the land in question in the month of September 2014, with Mr. Amrik Singh Nagpal. The possession was not given to him at that point of time but the land being open and accessible to everyone, he could enter upon the land. In the month of November, 2014, newspaper reports suggested that a large number of trees on the said land had been cut by someone illegally, practically denuding the land of trees and shrubbery. Mrs. Preminder Kaur acted speedily and had immediately sent her son to Shimla for lodging a police complaint and also a complaint with the forest department pointing out that some unauthorised persons had broken the Law and cut the trees without permission. According to him, after entering into an agreement to purchase and paying some earnest money in the name of his company, Pristine Hotels and Resorts Private Ltd. Mr. Nagpal arranged for the trees to be cut illegally taking undue advantage of the fact that Mrs. Preminder Kaur and her son, both were residing at Gurgaon near Delhi. The trees were cut towards the end of October uptill first half of November. During this period of time, nor at any other time, there was incentive for Mrs. Preminder Kaur to get the trees cut where as the intending purchaser had all reason to do so. According to the counsel Mrs. Preminder Kaur is correct, genuine and

authentic. Every evidence on record can be analysed to show and the only thing that is to be believed is the version of Mrs. Preminder Kaur and the witnesses appearing on her behalf and none else.

98. It is submitted on behalf of Mrs. Preminder Kaur that the most reliable and natural witness are the officials of the forest department. Both the witnesses from the forest department, one being a senior officer and other a Ranger concerned of that area have deposed that they first got to know about the cutting of the trees on 16th November, 2014. Both of them have deposed to the effect that they had passed by that area, on their patrolling duty or beat as it is referred to, at least every 15th day. Reference in this regard may be made to the cross-examination of Ms. Sharma who is the Forest Ranger. It is obvious that if the trees had been cut more than a fortnight before 16th of November then numerous Forest Officers and Rangers who do patrolling duty in the area would have noticed and reported the same. Therefore, their position certainly supports the statement of Mrs. Preminder Kaur.

99. It is further submitted by the counsel for Mrs. Kaur that perusal of the cross-examination of Mrs. Richa Bashta, would clearly reveal that she is an experienced, highly qualified and technically educated officer. She has deposed before the tribunal that a physical examination of the stumps indicated that the trees had been cut only 10 to 15

days earlier to the examination on 16.11.2014. She has also deposed that in a few months time, including the time that spanned a full summer and monsoon, would definitely have coppices growing out of the stumps. As per her depositions, no coppices had time to grow and in fact, the trees had been cut within the previous fortnight. This supports the stand of Mrs. Preminder Kaur and completely negates that of Mr. Nagpal.

100. It has also been submitted that the Tribunal must take note of the conduct of the respective parties immediately on news breaking. The news of the illegal felling of hundreds of trees, bushes and shrubs was first taken up by a local journalist in a newspaper. This further led to an outrage in the State Legislative Assembly and the Tribunal took *suo-moto* cognizance of the event. Notices were issued to the parties. However, before receiving notice of the Tribunal and on getting to know of the events, the son of Mrs. Preminder Kaur left Gurgaon and went to Shimla for lodging of complaint both, with the police official and the forest department. In case Mrs. Preminder Kaur, her family members or employees were in any way guilty of wrongdoing, the last thing they would have done was to bring to the notice of the authorities. The most natural impulse of every criminal would be to avoid bringing his offence to the notice of law enforcement authorities. The sequence of

events, as it turned out surely points the needle of suspicion and guilt towards Mr. Amrik Singh Nagpal.

101. While entering into the agreement to sell with Pristine Hotel, which is the company of Mr. Amrik Singh Nagpal, Mrs. Preminder Kaur and her son had engaged services of an Advocate, Mr. R.K Singh at Delhi. Since they were in touch with the Lawyer already, Mrs. Preminder Kaur and her son arranged to get the said Advocate to reach Shimla along with Mr. Fateh Singh Atwal to ensure that the complaints are written in the best possible manner so that the culprit could be brought to book. This conduct too points to the innocence of Mrs. Preminder Kaur and her family members.

102. On getting to know of these events and reaching the Divisional Forest Department office, Shimla, Mr. Fateh Singh Atwal and Mr. Tarsem Lal had first come to know about Mr. Praveen Sharma, one of the accused in the charge sheet filed by the Police. Mr. Praveen Sharma is an employee of Mr. Amrik Singh Nagpal and his company and was acting on his behalf. As per the charge sheet and the investigation conducted by the Shimla Police, Mr. Praveen Sharma forged the signature of Mrs. Preminder Kaur on an application for demarcation of the land. He had also signed the damage report subsequently and arranged for the concerned revenue officials to demarcate the land afresh. The investigation revealed that he took the help of one Mr.

Jaipal Chauhan, Kanoongo, who has already been charge sheeted for demarcation. Mr. Nagpal had only been authorized to seek the relevant permission before the execution of the Sale Deed. The act of illegal felling of trees and removing vegetation, coupled with the strange conduct of forging the signature on a demarcation application as well as actually getting the demarcation done for the said land, is obviously an act which was in aid of wrongful occupation of the land and the act of taking forcible possession. The illegal demarcation happened in the early part of November, 2014. It is obvious that the henchman of Mr. Nagpal were aiding and abating the overall act to take forcible and illegal possession, by taking undue advantage of the physical absence of Mrs. Preminder Kaur and her son from Shimla. The act of illegal felling of trees and removal of vegetation in the month of November, 2014, thus fits in completely with the malicious motive that seems to emerge from occurrence of these events. In contrast, the official demarcation must had happened on 02.12.2014 and another on 06.12.2014.

103. The learned counsel for Mrs. Preminder Kaur has submitted that if all these events are put together, what emerges is a plan on the part of Mr. Nagpal to take possession, get the land demarcated and in a position of control over the land without paying balance amount of sale and then to create dispute in which he would have an

upper hand being financially stronger and in possession of land. All these events cannot be seen in isolation as mere cutting of trees but rather part of larger criminal conspiracy. In fact, it is notable that despite of notice being issued by the Tribunal, Mr. Praveen Sharma had never put in appearance before it. His significant and noted absence from the Tribunal is indicative of a guilty state of mind, by itself.

104. On the other hand, and in sharp contrast to the conduct of the Atwal family, Mr. Amrik Singh Nagpal did not come forward and in fact made himself scarce until he was hauled by the Police who were investigating and questioning. In fact, petition for anticipatory bail filed by Mr. Amrik Singh Nagpal was rejected by the High Court of Shimla. This kind of avasive conduct points to the guilt of Mr. Nagpal and his henchman. Mr. Nagpal had placed on record a letter which is supposed to be an appointment letter for Mr. Praveen Sharma, as his employee and Manager.

105. Mr. Nagpal has admitted the fact that Mr. Praveen Sharma was working for him and under his directions. Once this fact is established, it becomes clearer as to what for was the entire motive, by felling of trees and wrongful demarcation. Having admitted that Mr. Praveen Sharma was his employee at the relevant times, Mr. Amrik Singh Nagpal is practically endorsing all actions committed by Mr.

Praveen Sharma. Whatever actions were taken by Mr. Praveen Sharma were under the directions of Mr. Nagpal and could not have been done by him independently, since the same have not been denied by Mr. Amrik Singh Nagpal, in the witness box.

106. It is submitted by the counsel appearing for Mrs. Preminder Kaur that initially investigation by Himachal Police was thorough, Thrust of the investigation is completely pointing towards the guilt of Mr. Amrik Singh Nagpal, Mr. Praveen Sharma and the third person Mr. Jaipal Chauhan, who is a Kanoongo. The status report filed before the Tribunal shows that the investigation conducted by senior Police official has tremendous value and there is no reason for diferring with it. A thorough finding of fact by competent officers on that ground, is in fact a very persuasive material for arriving at a conclusion on similar lines by the Tribunal. Furthermore, the investigation done by the Police, as given in the status report, also bears out the narrative of Mrs. Preminder Kaur as set out above and does not support Mr. Amrik Singh Nagpal.

107. During the pendency of these proceedings, it is submitted by the counsel for Mrs Preminder Kaur that the Himachal Police has filed a charge sheet which has already been placed on record by the counsel for State of Himachal Pradesh. A perusal of the charge sheet reveals that the

initial investigation, as set out in the status report, has become the basis of the actual charge sheet filed. In the list of prosecution witnesses Mrs. Preminder Kaur and her son, both figured prominently. It is obvious that a thorough enquiry of the case has been done during the police investigation and it has revealed that the guilty parties are Mr. Amrik Singh Nagpal as well as his employee and none else.

108. Learned counsel for Mrs. Preminder Kaur has also submitted that reference may be made to the facts, such as Google maps. The witnesses appearing for Mrs. Preminder Kaur and her son Mr. Fateh Singh Atwal have proved the fact that he has placed on record the pictures of the earth taken from satellite which are aligned with the website Google. The service of Google maps is a service that maps the earth and takes pictures from satellite in outer spaces of every part of the planet. The pictures taken in the month of September clearly shows the forest cover existent on the land but the pictures taken in November make it clear that the trees had been cut and the vegetation removed. This also establishes the fact that the narrative of Mr. Amrik Singh Nagpal is incorrect and it bears out the statement made by Mrs. Preminder Kaur.

109. On the other hand, the learned **counsel for Mr. Amrik Singh Nagpal** has **submitted** that Mrs. Preminder Kaur had shown the revenue record of the land (Vedalina estate)

to Mr. Nagpal of which she was having the title. Later on it was found that the land had large vacant spaces with terraces. The trees were scattered on the fringes of these terraces and some of these terraces were surrounded by trees. Almost all the trees were on the boundaries /fringes of the land. Shrubs, bushes and breeds of wild growth were found everywhere on the land. Further, it is submitted that since the major portion of the land was vacant and was usable, the respondent entered into an agreement of sale of the land with the seller for a total sale consideration of Rs. 16 crores. The seller is in exclusive possession of the land in question. Indisputably at no point of time the possession of the land or any part thereof was ever handed over to the respondent.

110. On the basis of evidence on record, the learned counsel for Mr. Amrik Singh Nagpal has further submitted that there is a motorable road to the land only through Casalini estate, where admittedly the care takers of the seller lived. There is no mention of existence of trees on the land, even in Jamabandi. Furthermore, the Jamabandi indicates the nature of land as ghasni and banjar. In the agreement dated 12.09.2014, there is no description of any trees over the land. The satellite pictures extracted from Google earth depicts large empty spaces on the land/estate even in the month of September. The photographs taken by the seller alleging damage, also depicts large empty/vacant spaces on

the land in question. Mr. Fateh Singh Atwal has, in his examination chief as well as in cross examination, categorically stated that Vedalina is a land with wide open space and with beautiful terraces. He has also indicated that the trees therein were of all the species.

111. It has also been submitted that as per the case of the seller, she was in financial trouble/difficulty. Furthermore, all earlier attempts to sell the land in question had failed. The agreement dated 12.09.2014 provided a stipulated period for the buyer to obtain the requisite permission under Section 118 of the Himachal Pradesh Tenancy and Land Revenue Act, 1972 up to 28th February, 2015. It had a grace period up till 21.05.2015, subject to payment of penalty of Rs. 21 lakhs to the seller.

112. The learned counsel for Mr. Nagpal has also submitted that immediately after signing of the agreement, the respondent had proceeded for procuring the essentiality certificate which is a pre-requisite for permission under the Himachal Pradesh Tenancy and Land Revenue Act, 1972. Contemporaneously the buyer authorized Mr. Praveen Sharma to apply for permission and NOCs as are required for obtaining the same under Section 118 of the Himachal Pradesh Tenancy and Land Revenue Act, 1972. Initially the respondent and later his authorized representative, started applying for NOCs from various departments of the Government of Himachal Pradesh. The documents

required for obtaining the said permission have been enlisted in para 11 & 12 of the affidavit filed by respondent.

113. The learned counsel for respondent Mr. Nagpal has submitted that as guided by revenue department, demarcation of land is essential and mandatory where the adjoining land belongs to the Government. This fact was indicated to the seller by the buyer. The demarcation was applied on behalf of the seller who was fully aware about the same. This is apparent from the facts on record that on 27.10.2014, application of demarcation was made. The parties had met at Delhi on 07.11.2014. The demarcation was carried out at Vedalina Estate on 12.11.2014. It is admitted by Mr. Tarsem Lal, (RW-2) that Mr. Mohan Lal was present at the time of demarcation of the land on 12.11.2014. He further states that he himself was not aware about the demarcation prior to 12.11.2014. Furthermore, Mr. Tarsem Lal (RW-2) and the seller were constantly in touch telephonically with each other on 12.11.2014, as is evident from the call details of mobile no. 9873508438. The application of demarcation was made, as alleged by seller in her statement recorded by Kanoongo, by forging the signature of the seller, viz-a-viz the demarcation on 12.11.2014 had also contained the said signatures. Apparently, the statement EX A/11 which has been filed by the Investigating Officer, Mr. Ajit Singh does not contain signature of the seller.

114. The learned counsel for Mr. Amrik Singh Nagpal has also submitted in respect of the conduct of the seller. According to him, if the seller was to stay at Gurgaon and never to help the respondent in procuring the requisite permission at Shimla (personally or through her Attorney) how it would be possible for the purchaser to ever get the requisite permission under law. Secondly, on 16.11.2014, the seller was telephonically in constant touch with one of her care taker namely; Tarsem Lal who called the respondent and requested him, on behalf of the seller, to visit the concerned office of the Forest department to resolve the issue viz-a-viz the trees on the land in question. It was for this reason that the purchaser had sent Mr. Praveen Sharma to the Forest office at shoghi. Thirdly, it was with an intention to usurp the hard earned money of the purchaser and to escape the rigors of law that the seller managed to implicate the purchaser in a false case, by distorting the facts, alleging criminal trespass, illegal cutting of trees from the land, impersonation and cheating the authorities to conduct demarcation.

115. The learned counsel for the purchaser Mr. Nagpal has submitted that there are number of inconsistencies in the evidence (both oral and documentary) that had emanated on record and in the statement of Mr. Fateh Singh Atwal and Mr. Tarsem Lal. In fact, the hon'ble Tribunal has also noticed the demeanour of the witness Mr. Fateh Singh

Atwal. Therefore, he has submitted that the actions and conduct of the seller, her son and the care takers are suspicious and cannot be overlooked.

116. As regards, the felling or cutting of trees, the learned counsel for the purchaser Mr. Nagpal has submitted that the respondent Mr. Nagpal is not aware as to when the trees were cut on the land in question. The investigation agency (Forest Department and the Police) did not get the wood/stumps scientifically tested so as to ascertain the exact time of the offence. According to the forest officer Ms. Nisha Sharma and Ms. Richa Bashta the trees were cut 10 to 15 days prior to the date when they inspected the land. However, the cook of the temple, Mr. Prem Chand in his statement under Section 164 CRPC dated 26.12.2014 has categorically stated that the trees were cut by the Nepali labourers who had come 10-15 days prior to the Navratras. Apparently, this would relate the date of occurrence prior to 12.09.2014 i.e the date of agreement between the seller and the respondent purchaser.

117. The counsel for the respondent purchaser has also questioned the investigations done by the forest officials as well as the police. It is said that the forest officials did not follow the procedure as entailed in the forest manual, with regard to the forest offence. The damage report was drawn only on 20.11.2014, after the matter was taken up *suo-moto* by the hon'ble Tribunal and no scientific test of the

stumps were conducted. The counsel has also submitted that the police has suppressed the written report dated 14.11.2014 given by the Block Forest Officer, Shoghi, which is indisputably the first information received by the police. The said report (1603/MR) reads as under:

प्रेषक: वन परिक्षेत्र अधिकारी
प्रभारी

प्रेषित:

थाना बालूगंज शिमला।

विशय : प्रथम प्राथमिकी दर्ज करने बारे।

महोदय,

उपरोक्त विषय के सन्दर्भ में प्रभारी परिवाद बीट व वन खण्ड अधिकारी शोधी ने मुझे 14.04.2014 को बताया कि दौराने गश्त उन्होंने जंगल तारब के साथ लगती निजी भूमि में लगभग 400 छोटे बड़े पेड़ काटे पाये गये। छानबीन करने पर पता चला है कि यह भूमि श्रीमति परिमिन्दर कौर निवासी कैसलीनी स्टेट की है। मौका पर पता चला है कि यह निजी भूमि आरक्षित वन तारब के साथ लगती है। पेड़ भी जंगल के साथ-साथ काटे गये हैं। यह शक है कि कुछ पेड़ शायद जंगल से भी काटे गये हैं। इस वन खण्ड अधिकारी शोधी ने भी थाना बालूगंज में प्रथम प्राथमिकी दर्ज करने बारी 14.11.2014 दरखास्त की थी। इस बारे श्रीमति परिमिन्दर कौर ने विभाग से कोई अनुमति नहीं ली। अतः महोदय से प्रार्थना है कि इस मामले में उचित कार्यवाही की जाए तथा प्रथम प्राथमिकी दर्ज की जाए।

वन वरिक्षेत्राधिकारी
मशोबरा वन परिक्षेत्र
मशोबरा।

The report clearly mentions that it was Mrs. Preminder Kaur who had got the trees cut on the land in question. No scientific test was conducted so as to ascertain the exact time of incident and no comprehensive investigation was carried out which could have given complete picture of all the relevant issues. It is further submitted by the counsel that the police had conducted the investigation but not in respect of the role of the seller, her son and the care takers, in the alleged occurrence. The property dealers including Mr. Ravi Anderson, Mr. Bains

and Mr. Virik were not even made an active part of the investigation. The CDRs of the seller, her son and the care takers were not even procured. The investigation Officer Mr. Ajit Singh (SW-3) has, in his cross examination before the Tribunal, categorically stated that he did not even see the agreement dated 12.09.2014 executed between seller and the purchase, during the course of the investigation. The counsel for the purchaser submitted that persistent efforts were made by writing numerous letters to the higher authorities namely; S.P, Shimla and DGP, H.P, with the request for fair investigation so that the real offender is brought to the front. It was in this background that the Police had further investigated the matter and the statements of Mr. Ravi Anderson, Mr. Kishori Lal and Mr. Mahinder Singh Chadda were got recorded under Section 164 CRPC.

118. With the aforesaid contentions, the learned counsel for respondent purchaser Mr. Nagpal has submitted that concerted attempt to save herself (seller) and her son from the rigorous of law that seller has engulfed respondent purchaser in this controversy through her care taker Mr. Tarsem Lal. In this regard he has referred to the call details of seller. The seller was admittedly in financial difficulties and earlier attempts for sale of the land in question had not materialized. It is therefore, submitted by the counsel that the role of the seller in cutting/felling of

the trees is inseparable. The respondent has in the month of January, 2015, and during the existence of the agreement dated 12.09.2014, voluntarily deposited a sum of Rs. 10 lakhs with the DFO for the purpose of restoration of the environment and to prevent its degradation. Subsequently, the seller vide her letter dated 11.06.2015 cancelled the agreement of 12.09.2014 and forfeited the part payment (Rs. 3 crores) made by the respondent purchaser. The counsel has submitted that in the event that the Tribunal finds the seller, her son and the care takers guilty of the alleged offence, the sum of Rs. 10 lakhs be levied upon the seller and returned to the respondent along with interest. The respondent was never in possession of the land or any part thereof. The investigation conducted by the forest department and the police is ex-facie unfair, tainted and smacks of foul play. The evidence that has emanated on record makes the story propounded by the seller highly improbable and completely shrouded with doubt. Therefore, the counsel for the purchaser has submitted that Mr. Nagpal is in no way related in the act of cutting of trees on the land in question and the seller be saddled with the consequences of it.

119. Now the question which arises for consideration is as to who is responsible for felling of the trees and liable for compensation.

The material facts with regard to the said question are that Mr. Amrik Singh Nagpal had entered into an agreement to sell on 12.09.2014 with Smt. Preminder Kaur, the owner of the land measuring 38.5 bigas which is known as Vedalina estate for a consideration of Rs. 16 crores. Rupees 3 crores was paid to Smt. Preminder Kaur as earnest money/part payment. It was stipulated in the agreement that the buyer was to obtain the requisite permission u/s 118 of the Himachal Pradesh Tenancy and Land Reform Act, 1972 up to 28.02.2015. A grace period, up to 21.05.2015, was given on payment of Rs. 21 lakhs to the seller. But the agreement nowhere mentions about a large number of trees existing on the land in question. At the time of execution of the agreement, the land owner, Smt. Preminder Kaur received an amount of Rs. 3 crores, as part payment, through cheque dated 12.09.2014 and cash of Rs. 5 lakhs. The cheque had thereafter been encashed by the seller.

On 01.10.2014, Shri. Praveen Sharma was authorized to apply for all permissions and NOCs as required for obtaining them under Section 118 of the Himachal Pradesh Tenancy and Land Reform Act, 1972. Application for demarcation of land was made to the Assistant Collector, Grade-I (Rural) Shimla on 27.10.2014. Thereafter, the seller and the buyer had met in Delhi on 07.11.2014. Land was got demarcated on 12.11.2014.

120. On 14.11.2014, a complaint regarding felling of trees was received telephonically by DFO, Shimla. The Forest Guard, Smt. Nisha Sharma (SW-1) and the Block Forest Officer, Shoghi Shri. Kundan Lal reached the site in question. The Range Officer, Smt. Richa Banchta (SW-2) and the DFO were informed about the illegal cutting/felling of trees. On the direction of the senior officers, the Block Forest Officer, Shoghi went to the Police Station, Boileauganj to lodge a report. It was clearly stated in the report that Mrs. Preminder Kaur had cut the trees on the land in question (the report dated 14.11.2014 is annexed along with the challan filed by the Police Officer). No damage report was prepared by the Forest Guard. On 15.11.2014, the Assistant Conservator of Forest, along with the Range Officer and the field staff visited the spot and prepared a detailed damage report. As per this report, 477 trees of Deodar, Oak and other broad leaf species have been felled illegally.

The police along with the Forest Officers inspected the site on 16.11.2014. No FIR was registered. No damage report was prepared by the Forest Guard. Mr. Tarsem Lal (PW-2), care taker of the owner telephonically contacted Mr. Amrik Singh Nagpal and requested him, on behalf of the owner, to depute someone to visit the concerned officer of the forest department.

121. On 20.11.2014, NGT took *suo-moto* cognizance of the matter on the basis of the newspaper report. Later in the day, the DFO had visited the spot and prepared a report which was submitted to the Conservator of Forest. A fresh complaint was made to the police. A damage report was prepared by the Forest Guard. Range officer, Mashobra; Assistant Conservator of Forest, Shimla Division and DFO Shimla were placed under suspension, vide order dated 20.11.2014, issued by Government of H.P. An FIR was registered on 21.11.2014 u/s 30/33, Indian Forest Act, 1927 and u/s 447 IPC 1860, on the basis of a fresh complaint dated 20.11.2014.

122. Mrs. Preminder Kaur, through her lawyer in Delhi, is said to have submitted a complaint by e-mail, with the Forest Department on 22.11.2014, for trespass and theft. But the said email is neither on record of the seller nor that of forest officials. Smt. Preminder Kaur through her son Mr. Fateh Singh Atwal, had filed a criminal complaint on 24.11.2014 with Police Station, Boileauganj, Shimla, alleging criminal trespass, illegal cutting and theft of trees. On 26.12.2014, a statement of Mr. Prem Chand, a cook at Tara Devi Temple, was recorded u/s 164 CRPC, in the said criminal case.

123. The land in question is owned by Smt. Preminder Kaur and the total number of trees felled were taken by the forest department as 477 (Deodar, Oak and other Broad Leaf Species) by counting their stumps. The value of the trees

was roughly estimated to be 35 lakhs. The trees had been cut and not uprooted along with their stump and roots. The trees were cut by mechanical cutter. No tree was burnt. However, the tops of small trees, bushes and their branches were burnt. There is possibility of stumps of Baan trees to review and re-grow. Efforts could be made to review 426 Baan tree stumps to regrow.

124. According to the forest department, a complaint with regard to felling of trees on the private land near Taradevi Temple was received telephonically by the Divisional Forest Officer (DFO) Shimla on 14.11.2014. DFO had immediately enquired from the concerned staff and directed them to visit the spot for taking the required action. The concerned staff took cognizance of the offence and seized some Oak wood and 82.5 M³ wood on 14.11.2014 which was found stocked near Taradevi Temple. The rest of Oak wood and Deodar timber could not be traced. The matter was then handed over to the police by the Block Forest Officer (BFO), Shoghi and the In-charge Pateod Beat on 14.11.2014 itself, for investigation. The Assistant Conservator of Forest (ACF) then visited the spot along with the Range Forest Officer (RFO), Mashobra and the field staff on 15.11.2014. After inspecting the site, a detail report was submitted to DFO, Shimla on 16.11.2014. RFO, Mashobra had informed that SHO, Police Station Boileauganj had requested DFO, Shimla for guidelines and supply of the documents relating

to panchnama of trees in the private land. The said documents were supplied to him on the same day. From 17.11.2014 to 19.11.2014, the staff of Mashobra range carried out an enquiry and collected the documents so as to ascertain the status of land. DFO, Shimla had also inspected the site on 20.11.2014 and submitted his report to the Conservator of Forest.

125. With the intervention of DFO, Shimla, an FIR came to be registered at Police Station, Boileauganj on 21.11.2014. Thereafter, investigation in the matter was done by police and forest department provided full assistance to them. A joint search operation was carried out by RFOs of Mashobra and, Taradevi, along with the staff of both the ranges, from 28.11.2014 to 30.1.2015.

126. The revenue department had demarcated the area in presence of the staff of forest and police departments on 06.12.2014 and the report was received in the office of DFO, Shimla on the same day. It was thereafter sent to the Principal Chief Conservator of Forest (PCCF) on 12.12.2014. As per the report, one tree of Baan of class-III had been felled from the government land by Mrs. Preminder Kaur.

127. The land in question known as Vedalina estate, was situated near another estate of the owner named Casalini and was adjacent to the government land, near Tara Devi hills. After issuance of notice by the Tribunal on

20.11.2014, the State Government was directed to examine the matter and to serve the notice to all private owners of the land. In furtherance thereof the counsel for the State appeared and informed the Tribunal on factual aspects. The Tribunal had then issued injunction against the owner from carrying out any construction/non-forest activity, without the leave of the concerned departments and specific order of the Tribunal. However, it was ordered that a part of the land on which agriculture activity was already going on would continue in those areas.

128. It is noteworthy that neither in Jamabandi of the land in question nor the revenue record, there had been any entry that there were trees in large number. Even in the reply affidavit filed by the land owner, Mrs. Preminder Kaur, no mention was made about the trees or their number which were in existence. In the reply filed by Mr. Amrik Singh Nagpal, the purchaser, it has been mentioned that the land is covered by barbed wire and has a locked gate which is looked after by two care takers of the owner, who are living in that area. The keys of the gate are in possession of the care takers. On 16.11.2014, Mr. Tarsem Lal (one of the care taker) telephonically contacted Mr. Amrik Singh Nagpal and requested him, on behalf of the owner, to depute someone to visit the concerned office of the forest department so as to resolve the issue viz-a-viz the trees on

the land in question. Accordingly he had asked Mr. Praveen Sharma to visit the office of the Forest Officer.

129. Mrs. Preminder Kaur, in her subsequent response to the notice, stated that Vedalina estate has no residence except for an old and dilapidated structure which, when the land was acquired, was already unfit for use by humans and was being used as a cow shed. Further she has stated that Vedalina estate was used for agriculture purpose (mostly for growing vegetables) although not continuously, and was a wide open piece of land with beautiful terraces. It is also stated that most of the trees were on one side and the rest were scattered. This land also had numerous shrubs, enough to enable the family to make black berry jelly in substantial quantity. In respect of the agreement, it is said by the land owner that it was merely an initial understanding and was cursory in its language. No detailed description of the land was given and when the sale was to materialise all details would come eventually in the sale deed. No mention was made about the trees on the said land. On 07.11.2014, parties had met at New Delhi where the two agreements were merged into one document. The land owner has also stated, in the reply, that it must be noticed that while tree cover was on the fringes of the said land, there was no desire or effort on her part to ever increase the cultivable area by removing any trees. The aforesaid circumstances shows that it is not

clearly established as to whether there was any large number of trees existing on the land at the time of agreement to sell between the parties. Apart from the relevant documents including agreement, revenue records, etc., it has not been made clear even by the seller as to how many trees were in existence when the deal with regard to transfer of the property was made.

130. Further Mrs Preminder Kaur has stated that the first meeting with Amrik Singh Nagpal had taken place in August 2014, in the presence of three brokers. She was accompanied by her son, Mr. Fateh Singh Atwal Singh Atwal, Chartered Accountant and Mr. Ravi Anderson. According to her the balance amount was to be paid after getting clearance and permission of the State Government, under the relevant provisions of law. She has stated that Amrik Singh Nagpal had said that he will need further time to get permission for transfer of land, as being a non-resident of Himachal Pradesh. She has also stated that the salient features of the agreement were that the time period within which Amrik Singh Nagpal was to get clearance and permission from the authorities was fixed as 28th February, 2015, with a penalty clause which would come into operation after that date. Besides the penalty clause there was a grace period up to 21st May, 2015, with imposition of penalty. She had also signed a supplementary agreement to the effect that in case Section 118 clearances comes

earlier, purchaser would pay 90% of the total amount and the balance to be paid when the second clearance comes through. It is also stated that while tree cover was on the fringes of the said land there was no desire or effort on the part of the owner to ever increase the cultivable area by removing the tree.

131. The respondent Mr. Praveen Sharma, in his reply to the show cause notice, has stated that Mr. Amrik Singh Nagpal is a non-agriculturist/ non-Himachali. It was incumbent upon him to obtain necessary permissions from the State Government for purchase of the land under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, within the stipulated period as provided under the agreement. Further, he has stated that the land was in possession of the owner (Mrs Preminder Kaur) and the same was covered with barbed wires and had a locked gate. This land was looked after by two care takers of the owner who live in a house, in the area in question. The keys of the gate are in possession of the care taker and undoubtedly, it is not possible for anyone to enter the premise without permission. A status report in case of FIR No. 233/2014 has been filed on record by Mr. Ajit Singh, Assistant Sub Inspector, Police Station on 3rd May, 2016, along with the statements of Mr. Ravi Anderson, Mr. Kishori Lal and Mahender Singh Chadda which were recorded under Section 164 CRPC by Additional Chief

Magistrate, Court No. 2, Shimla. It has been stated in the status report that on 21.11.2014 Mrs. Richa Banchta, Forest Range Officer had submitted a complaint to SHO, Police Station for registration of a case and she had been intimated by Forest Officer, Shoghi that during patrolling they had noticed felling of about 400. On enquiry it was found that the land belongs to Mrs. Preminder Kaur. She had not obtained any permission to cut the trees. It has further been stated in the status report that on 26.12.2014 statement of Mr. Prem Chand, a cook of Durga Mata Mandir, Tara Devi had been recorded under Section 164 CrPC before Judicial Magistrate, Shimla. It is also stated that during the course of investigation some new facts had come on record. In the statements of Mr. Ravi Anderson, Mr. Kishori Lal and Mr. Mahender Singh Chadda, recorded under Section 164 CrPC, it was stated that the trees had been fell by labours/ servants of Mrs. Preminder Kaur and Mr. Fateh Singh. Summons under Section 160 CrPC were also issued to Mr. Tarsem Lal and Mr. Mohan Lal, servants of Mrs. Preminder Kaur. They had stated that no tree was felled by them.

- 132.** During the course of tendering of evidence by the parties before the Tribunal, **affidavits** in evidence for the purpose of **examination in chief** was submitted by **Fateh Singh Atwal** (RW-1) deposing *inter alia*, that “*Vedalina was used for agricultural purposes, though not continuously and was*

wide open piece of land with beautiful terraces. Although it had many trees, most of them were on one side and the rest were scattered and fringed on some of the terraces.”

Further it is deposed that *“the balance amount was to be paid after getting clearance and permission of the State Government under the relevant provisions of the law.”* While the owner insisted that there should be an outer limit of time period envisaged for getting permission to change use of land and commercial exploitation of land, Sh. Amrik Singh Nagpal stated that he need further time to get permission for transfer of the land to a non-resident of Himachal Pradesh. *“Neither Amrik Singh Nagpal nor any other person was given authority to perform any process on the land in question and the same continued to be in the possession of his mother.”* He has also stated that *“the salient features of the agreement were that the time period within which Nagpal was to get clearance and permission from the authorities, was fixed at 28th February, 2015 with a penalty clause becoming operative after that date. Besides the penalty clause coming into effect, there was a grace period up to 21st May, 2015 with imposition of penalty.”* He has further stated that *“my mother had also signed a supplementary agreement to the effect that in case one of the clearances under Section 118 comes earlier then the seller would pay 90% of the amount and the balance when the second one comes through. He has deposed that no detail*

description of the land was given, had the sale materialised all details were to be given in the eventual sale deed. No mention was made about the trees growing on the said land.” He has stated that “the advocate representing Mr. Nagpal had initially responded to our first notice stating that there had never been any trees on the said land in the first place.”

133. Mr. **Fateh Singh Atwal** appeared in the witness box on 13th July 2015. **In his cross examination** he has stated that *“the land, referred in para two of my affidavit, is in our exclusive possession since the date we purchased it. Of and on we used to carry out our agricultural activities on this land. There were plenty of open spaces on the land. It is correct that there were some open fields on the land in question. There were scattered trees which were not spread all over the land.”* He had stated that *“he had not kept any record of number of trees existing on the site in question since the date we had purchased the land.”* He has admitted that *“a person who is a non-agriculturist and buys land in Himachal Pradesh would require permission from the authorities concerned. Further, he has stated that he does not know whether seeking permission under Section 118 of the Himachal Pradesh Tenancy and Land Reform Act, 1972 is necessary.”* But when the counsel for the State of Himachal Pradesh cross examined this witness, he had stated that *“I am aware that non-Himachali, for purchasing*

in Himachal Pradesh, is required to take permission under Section 118 of Himachal Pradesh Land Revenue Act.”

134. He has further stated that *“it is correct that we had intended to sell the property and made efforts once or twice prior to meeting Mr. Nagpal. Reason for the sale of property was financial difficulties of the owner.”* He had specifically stated that *“It is correct that in the agreement to sell with Mr. Nagpal, dated 12th September, 2014, there was no mention of trees in the agreement nor the description of the land.”* Further he has stated *“it is incorrect to suggest that trees were cut by owners or by me or under our directions to overcome the financial difficulties of the owners.”* Further, *“it is incorrect to suggest that even when NGT had taken cognizance of the case more money was demanded by the owner from Mr. Nagpal.”* He has also stated that *“I had not given any instruction to Mr. Tarsem Lal to call Mr. Nagpal. Therefore, I cannot admit or deny whether the same person had called Mr. Nagpal around 16th November, 2014.”* But the call details show that Mr. Tarsem Lal had called Mr Praveen Kumar by cell phon on 16.11.2014.

135. On cross examination by learned counsel for the State of Himachal Pradesh, the witness deposed that *“Mr. Tarsem Lal was the Manager of our estate and Mr. Manohar Lal and Mr. Jaspal were the gardeners.”* Further, *“Mr. Tarsem Lal used to come to Delhi and inform me about the property.”* *“I*

have no exact count of the trees on the site in question. However, there was large number of trees.”

136. This witness was questioned by the court as follows:

Why you or any of your employees did not make any complaint to the police or forest authority of the State Government immediately when the trees were found to be cut or in any case prior to 14th November, 2014 when on telephonic message the DFO had registered the case.

Ans....:*“I do not know whether my employees also did not know about the cutting of the trees.”*

137. Questions were asked repeatedly by the court and it was found that he was avoiding to give answers clearly, which were very much within his personal knowledge.

When the learned counsel for the State of Himachal Pradesh cross examined the witness, it was stated that *“I or my mother did not make any application to the forest department in regard to felling of trees. I or my mother had never made any complaint to the authority about the illegal entry or trespass into the property in question.”*

138. Mr. Tarsem Lal appeared in the witness box (PW-2) and had deposed that *“It is correct to suggest that the property in question is an open land and has open spaces.”* *“Further, nearly three cows and one bull were kept by my employer at the property in question. About four years back, at the property in question, they used to do agricultural activities, besides looking after the animals.”* He has also stated that

“I had never seen Mr. Nagpal at the property in question.” It was also stated by the witness that “it is incorrect to suggest that my employer along with myself and others have cut trees from the property in question, gradually one by one.” “The forest department officials had come to the property in question and recorded my statement on 16th / 17th November 2014.” “Even at this stage I did not call Mrs. Preminder Kaur or her son informing them that the trees have been cut from the property in question. I did not go around the property to see how many trees have been cut. I did not even noticed the extent of the cutting of the trees on the property. I had called Mr. Nagpal on 16th November 2012. I had told Mr. Nagpal that some wood have been cut at the property in question, in respect of which Mr. Nagpal told me that he had not cut any trees and he will look into the matter.” At that time he was not there.” He has also stated that “on 15th November, 2014 Mr. Mohan Lal had rang up to inform that some forest officers had come to the site.” “On 16th November, 2014 in the morning, I had gone to Casalini estate. At Casalini estate only Mohan Lal was present. I was inside the gate when the forest and police officers came and I asked them to sit down and treated them with tea. There were two forest officers, and two police officers, out of which one was lady police officer. My statement was recorded in Casalini estate. They had asked for my mobile number which I had given to them. The team made enquiry

from me that who is the owner of the property but they did not ask for the cell number, however, I did not provide them with their cell number. I did not give the number of my owners. I have only one mobile. The mobile set has been provided to me by my owner. The police and forest officer were there with me for nearly 1 ½ hours. I did not ring up Mrs. Preminder Kaur during the period of 15th and 16th November, 2014. However, Mrs. Preminder Kaur used to call me regularly. When these officers were present, I rang up the person with whom the transaction to sell the land was being finalised. During that period of 1 ½ hours I did not speak to Mrs. Preminder Kaur. I had signed the statement which was recorded by authorities at Casalini estate. I had signed the statement in Hindi Language. My statement was recorded in the presence of Mr. Mohan Lal at Casalini estate. I do not know if the signatures of Mr. Mohan Lal was obtained or not in my presence.”

139. The purchaser of the land, **Mr. Amrik Singh Nagpal**, in his affidavit, as **examination in chief**, has **deposed** that “Mrs. Preminder Kaur enticed me to purchase 38.5 bigas of land at Mauza Jungle, Tara Devi Tehsil, District Shimla on the pretext that I can construct a good and profitable hotel on the said land.” Further, he has stated that “there was no entry of any tree in the Revenue record. Subsequently, he was taken by the seller to Shimla for inspection of the land. The land had wide open large vacant spaces with beautiful

terraces. The trees were scattered on the fringes of these terraces and some of these terraces were also surrounded by trees. Rest almost all trees were on the boundaries of the land. Shrubs, bushes and weeds of wild growth were apparently found everywhere on the land.” He has also deposed that “since the major portion of the land was vacant and was useful, I had entered into an agreement of the sale of land.” “The seller asked me to take requisite permission and apparently a specific condition was embodied in the said agreement. The seller did not disclose at the time of the execution of the agreement that the said land was within the proposed green area and no project is viable on the said land as no permission under Section 118 of the Act, 1972, would be accorded by the Government.” “By subsequent acts and conduct of the seller, it came to fore that she acted fraudulently and dishonestly and had induced me to enter into an agreement and thereby deceived me to delivered a huge amount of 3 crores knowing well that no permission under Section 118 of the Act of 1972 can be granted on the said land, being part of the proposed plan area. The seller deliberately imposed penalty clause in the agreement that I have to pay an amount of Rs. 21 lakhs over and above the agreed amount, if I fail to obtain the permission before 28.02.2015. It is clearly evident from her acts and conduct that her intentions were dishonest at the time when she initially had talks with me at Chandigarh and subsequently

when she entered into an agreement and induced me to purchase the land. She knew the fact that the land falls within the proposed green area and in all eventualities no permission would be granted in my favour. She imposed such condition in the agreement and was successful in taking the money.”

140. Mr. **Amrik Singh Nagpal** appeared as a witness (RW-3) **for cross examination** and deposed that “*when I went for the second time on the property in question, it was in the same condition as it is today. There was land with grass and an old house, at the site. There were 5-6 trees on the land in question, while on the boundaries there were number of trees. The trees that I had seen on my earlier visit were in existence when I last saw the land in question. I cannot deny the suggestion that there are stumps of trees on the land in question and some chemical had been poured upon them with an intention to burn the same. It was for the reason that there were no trees on the land that I planned to construct the hotel. It is correct that I had submitted a complaint at the Police Station at Sector 36, Chandigarh. I had mentioned in my complaint that there were no trees on the site in question. It is incorrect to suggest that I had cut these trees to take illegal possession of the land in question.”*

141. From the aforesaid facts and circumstances it is clear that the owner of the land from which the trees were cut is Mrs. Preminder Kaur. She was in exclusive possession of

the land in question. There was wire fencing around the estate with a locked gate. The owner had kept staff who were the care takers of the land in question as well as the adjoining estate which is known as Caselini. The owner, Mrs. Preminder Kaur and her son Mr. Fateh Singh Atwal were in regular touch with the staff kept at the estates. There cannot be any denial of the fact that the trees which were felled, totalling into 477, had been cut by mechanical cutter and their number is fully established by counting their stumps. The consistent stand taken by the owner that she did not come to know about felling of the trees and was not aware as to when it took place is difficult to believe. Assuming for the sake of arguments that the owner, namely; Mrs Preminder Kaur or her son Mr. Fateh Singh Atwal did not get the trees cut but her stand that she did not come to know through their care takers or otherwise about felling of trees and had come to know about it only through internet/media does not inspire confidence to us. When she had kept her staff at the site, in the normal course of things, it is to be taken that she would be immediately informed about such an incident more particularly when such a large numbr of trees have been felled. Moreover, soon after receipt of telephonic message on 14.11.2014, the Police as well as the forest department came into action. The Police had even visited the site and enquired from the staff of the owner who were available

there. Subsequently, the owner was also called for the purpose of enquiry/investigation. It is unbelievable that in such a situation the staff stationed at the estate would not inform the owner immediately after the incident. Looking to the number of trees which had been felled i.e 477, it cannot be believed that the same could have taken place within hours or in one day. Even if the trees were felled by using mechanical cutters, it must have taken number of days to cut 477 trees at the site. Such circumstances speak for itself that even if, as per the version of the owner, the felling of the trees was not done or got done by her, the staff living at the site must have come to know about such incident. Even if some other person had cut down the trees, they ought to have informed the owner about the incident immediately. Mrs. Preminder Kaur is the owner of the land and she is the custodian of the trees/vegetation which was grown on it. She is the first person who is answerable under law for felling of such trees. It was her bounden duty, even if the trees were cut in her absence, to take appropriate steps immediately by way of report/complaint to the concerned authorities.

142. Apart from it, it is a matter of record that the care taker of the owner, namely; Tarsem Lal had during that time, contacted the purchaser for sending some person to settle the issue of the trees with the forest department. This further belies the version of the owner that she was never

informed about the happenings at Vedalina estate. On the contrary, the owner had been consistently taking the stand that she came to know about the incident only at a later stage when the issue was flashed in media. Furthermore, as per the owner, she had later on reported the matter to the authorities through email. But no copy of such email is found in record, either of the Police or the Forest Department. **Above all, the owner Mrs. Preminder Kaur did not appear as a witness before the Tribunal to prove her case.** Her absence before the Tribunal is of grave consequence. She was the material witness in this case. Looking to the nature of dispute involved in the present case, non-appearance of the seller in the witness box before the Tribunal is very vital and goes to the root of the case. It inevitably leads us to draw an adverse inference against Mrs. Preminder Kaur.

143. So far as her son, Mr. Fateh Singh Atwal who had appeared as a witness is concerned, his testimony does not at all inspire confidence. At the time of recording of the evidence of Mr. Fateh Singh Atwal, the Tribunal had noticed his demeanour during the answers given by him to the court questions. An overall reading and consideration of the statement of Mr. Fateh Singh Atwal, as referred to above, leads to the conclusion that he had not spoken the truth and had tried to hide facts which were very much in his knowledge. From the side of the owner of the estate, Mrs

Preminder Kaur and Mr. Fateh Singh Atwal were the primary witnesses to prove their case.

144. In the present situation when the owner had absented herself from appearing as a witness, for the reasons best known to her, and the other witness who is none else but her son namely; Mr. Fateh Singh Atwal is not at all worthy of reliance, we have no hesitation in holding that the owner Mrs. Preminder Kaur has failed to establish her innocence and she is responsible for felling of the trees.

In the aforesaid facts and circumstances, the reasons mentioned above and the view held by us in the earlier paras we find no merit in the Original Application No. 170/2015 filed by Mrs. Preminder Kaur against the purchaser Mr. Amrik Singh Nagpal and Mr. Praveen Sharma. The owner is not entitled for any compensation from the respondents.

145. Now coming to the case of purchaser Mr. Amrik Singh Nagpal, it is an admitted position that he had agreed to purchase Vedalina estate for which an agreement to sell was executed by the owner on 12.09.2014. This transaction had certainly created an interest for Mr. Amrik Singh Nagpal, if not a vested right. When the issue of felling of trees came across the area and was made known to all by the media, thereafter when suo moto cognizance was taken by the Tribunal, the purchaser must have also come to know about such large number of trees having

been felled. Besides, Mr. Tarsem Lal, the care taker of the owner had also contacted him to send a person to the office of forest department to settle the issue of trees. It was incumbent on the part of Mr. Amrik Singh Nagpal to have immediately rushed to the site and take action against the wrong doers. But strangely the purchaser did not act in the manner in which a prudent man would have, in such a situation. As a matter of fact, a spontaneous action should have been taken by the purchaser because he not only had interest in the land but he had also paid an amount of Rs. 3 Crores. He was also fully aware that time was the essence of the contract which he had entered into with the owner of the land. Certain steps had to be taken by him within time stipulated in the agreement, failing which liability by way of payment of extra amount was to be borne by him. Despite all of this, the purchaser was not only inactive but there was slackness on his part, which was very much apparent.

As a purchaser of the property, it was the duty of Mr. Amrik Singh Nagpal to have made all efforts to find out the culprits who were responsible for felling of trees so as to book them for being prosecuted under the relevant law. The purchaser ought to have realized the gravity of the matter where as many as 477 full grown trees were felled and this number was sufficient enough to disturb the environment of the entire area and affect the ecology.

146. The entire transaction was for larger consideration and mutual benefit. The land owner was interested in her consideration for sale of the land whereas the buyer had parted with an amount of Rs. 3 crores for the property to construct hotel/resort in the hilly area. It was the desire of the purchaser which had put him to work speedily, for getting the clearances etc. and proceed further to develop the land for the project. Earliest completion of the project became the sole object of the purchaser and he was motivated to gain profit. Consequently, we are of the view that the purchaser is also responsible for the damage caused to the environment.

147. Earlier on 08.01.2015 we had directed the District Forest Officer, Rural Shimla to submit a plan as to how the project of reforestation is to be carried out at the same place or at the adjoining places. Further, we had directed that the proposal should be on the basis of at least ten times the trees felled or cut i.e. 4770 for 477 cut trees. We issue direction to the Principal Conservator of Forest, State of Himachal Pradesh to ensure that the order dated 08.01.2015 of the Tribunal is fully complied with. The aforesaid direction by the Tribunal should be carried out without delay and default. The first compliance report should be submitted by 16th September, 2017. Thereafter a report every two months should be submitted to the

Tribunal for proper implementation of the order and directions contained in this judgement.

148. Before proceeding further for restoration of environment and ecology of the area it would be relevant to mention about the severity of impact on environment by felling of trees, as have been observed by us during the course of the present proceedings on 20.01.2015:

“Trees play a very important role in maintaining the ecological balance in the biosphere. SINCE THE BEGINNING, TREES HAVE FURNISHED US WITH TWO OF LIFE'S ESSENTIALS, FOOD AND OXYGEN. On an average, one tree produces nearly 260 pounds of oxygen and absorbs up to 48 lbs of carbon dioxide a year. WITH THE EVOLUTION OF HUMAN CIVILIZATION CONTRIBUTION OF TREES IN MAKING OUR LIFE COMFORTABLE INCREASED SEVERAL FOLD, I.E., THEY PROVIDE US NECESSITIES SUCH AS CLOTHING, SHELTER, MEDICINE, AND TOOLS. TODAY, THEIR VALUE CONTINUES TO INCREASE AND MORE BENEFITS OF TREES ARE BEING DISCOVERED AS THEIR ROLE EXPANDS TO SATISFY THE NEEDS CREATED BY OUR MODERN LIFESTYLES. TREES CONTRIBUTE TO OUR ENVIRONMENT BY PROVIDING OXYGEN, IMPROVING AIR QUALITY, CLIMATE AMELIORATION, CONSERVING WATER, PRESERVING SOIL, AND SUPPORTING WILDLIFE. DURING THE PROCESS OF PHOTOSYNTHESIS, TREES TAKE IN CARBON DIOXIDE AND PRODUCE OXYGEN WE BREATHE. They provide us with fresh air to breathe, shade in summers, food, and other benefits without which we cannot even think of living. TREES CONTROL CLIMATE BY MODERATING THE EFFECTS OF THE SUN, RAIN AND WIND. LEAVES ABSORB AND FILTER THE SUN'S RADIANT ENERGY, KEEPING THINGS COOL IN SUMMER. TREES ALSO PRESERVE WARMTH BY PROVIDING A SCREEN FROM HARSH WIND. IN ADDITION TO INFLUENCING WIND SPEED AND DIRECTION, THEY SHIELD US FROM THE DOWNFALL OF RAIN, SLEET AND HAIL. TREES LOWER THE AIR TEMPERATURE AND REDUCE THE HEAT INTENSITY OF THE GREENHOUSE EFFECT BY MAINTAINING LOW LEVELS OF CARBON DIOXIDE. Both above and below ground, trees are essential to the eco-systems in which they occur. Far reaching

roots hold soil in place and fight erosion. Trees absorb and store rainwater which reduce runoff and sediment deposit after storms. This helps the ground water supply recharge, prevents the transport of chemicals into streams and prevents flooding. Fallen leaves make excellent compost that enriches soil. In the present day scenario trees in Urban Environments help in muffling the urban noise. In Suburban Environments they help in providing shade canopy and noise buffers and also congenial habitat for suburban wildlife, while in the rural environment they protect the crops from wind, control erosion and create diverse plant and animal habitats. Despite knowing the importance of trees, human beings are still cutting down the trees and forests have started depleting from this beautiful earth. Deforestation has the following dangers: –

Destruction of carbon sinks: Carbon sinks are huge stores of carbon. Large quantities of carbon are trapped by plants in general and trees in particular in the body biomass thereby helping in balancing the carbon dioxide content in the biosphere. Mature trees hold large quantities of carbon. Each acre of the forest has been taking roughly 0.75 metric ton of carbon out of the atmosphere annually, doing its humble part to counteract greenhouse warming [The Case of Missing Carbon: National Geographic]. A mature tree can absorb up to 48 lbs of carbon dioxide a year (McAliney 1993). In fact, large trees at maturity can store approximately 1000 times more carbon dioxide than saplings (Nowak 2001). This difference highlights the importance of maintaining large tracts of healthy, mature forest, which will be much more useful in establishing carbon sinks than planting saplings [Ravin, A & Ranie, T: Best Practices for Including Carbon Sinks in Greenhouse Gas Inventories]. When a tree is felled and burnt the carbon present in its body gets converted back into carbon dioxide and is released into the atmosphere. Timber extraction may only represent a comparatively small return of carbon to the atmosphere: wood does not release CO₂ until it decomposes or is burnt. The oxidation of leaf litter and surface soil biomass in felled areas will add to net emissions in the short term. Where re-growth or restocking does not take place, there is a potential net loss of 50 t C/ha [Environmental impacts of land management; Natural England Research Report NERR030; pp 131 – 142]. –

Soil Erosion: Deforestation makes soil prone to erosion by agents such as wind and water. The roots of trees hold the particles of soil together, thus preventing the fertile top soil from being carried away. Soil erosion leads to loss of productivity of the land due to loss of mineral nutrients and soil microorganisms

Destruction of animal habitats: Apart from domesticated animals and marine and fresh water animals, all other animals need forests as their habitats. These forests do not only provide a place for the animals to roam around but also provide their food and act as a source of protection from predators through camouflage. Actually each plant/tree provides a unique microhabitat of a great array of macro and microscopic animals and when it is felled these organisms are significantly affected. Destruction of the animals' habitats literally kills the animals. –

Source for medicine: Many plants/trees are a source of important medicines used for the treatment of diseases in case of human beings as well as domesticated animals. Destruction of such trees leads to destruction of such medicines.

Greenhouse effect and global warming: Nature balances the flow of energy and nutrients. Trees and forests play a very vital role in the flow of energy and cycling of nutrients like carbon, nitrogen, phosphorus, etc., in the biosphere. Destruction of trees/forests results in the disturbance in the natural balance in the cycling process of various nutrients. For example, recent calculations suggest that carbon dioxide emissions from deforestation and forest degradation (excluding peat land emissions) contribute about 12% of total anthropogenic carbon dioxide emissions with a range from 6 to 17% [van der Werf, et al. (2009). "CO₂ emissions from forest loss". *Nature Geoscience* 2 (11): 737–738]. Deforestation causes carbon dioxide to linger in the atmosphere. As carbon dioxide accrues, it produces a layer in the atmosphere that traps radiation from the sun. The radiation converts to heat which causes global warming, which is better known as the greenhouse effect. Destruction of forests also causes modification of climate of an area mostly leading to desertification and aridity. – Trees, and plants in general, affect the water cycle significantly in a number of ways

♣ The tree canopy intercepts precipitation, and a part of it is in the process evaporated back to the atmosphere;

♣ Tree litter, stems and trunks slow down surface runoff;

- ♣ *their roots create macropores – large conduits – in the soil that increase infiltration of water;*
- ♣ *they contribute to terrestrial evaporation and reduce soil moisture via transpiration;*
- ♣ *their litter and other organic residue change soil properties that affect the capacity of soil to store water.*
- ♣ *their leaves control the humidity of the atmosphere through the process of transpiration [Scherer et al (2013) Soil, Water and Plant Characteristics Important to Irrigation, North Dakota State University, Fargo, North Dakota].*

Chopping down vast swathes of forest is known to have an effect on climate, but what is the impact of cutting down a handful of trees? A recent study by Zhang et al. (2014) shows that even smallscale land clearance – a few hectares or less – causes a noticeable change in local temperature. According to climate models, tropical deforestation causes warming, while loss of forest at high latitudes brings about cooling. The transition from warming to cooling occurs at latitude of around 35°. But most land-use change occurs at far smaller scales: To see whether the loss of only a few trees has any impact on the climate of an area Zhang et al (2014) studied 40 locations across North and South America and 12 locations in Eastern Asia[Zhang et al. (2014). Response of surface air temperature to small-scale land clearing across latitudes. Environ. Res. Lett. 9 (3): 7pp]. They observed that at tropical and subtropical latitudes (15°S to 20°N) local deforestation caused a warming effect of more than 0.5 °C on daily maximum temperature. In boreal latitudes (over 45°N and S) a cooling effect of nearly 1 °C on daily minimum temperature was reported. The team found that small-scale deforestation has the greatest localized warming effect in the tropics – between 10°N and 10°S. After that the impact decreases, switching to a cooling effect at latitude of around 35°.

Research also suggests probable increases in under-storey native plant cover and richness after tree over-storeys are mostly or completely removed. As the pattern of the plant cover changes, it affects the composition of the faunal assemblages in the area as well [Abella, S. R. & Springer, J. D. (2014), Effects of tree cutting and fire on understory vegetation in mixed conifer Forests; Forest Ecology and Management (2014)19pp]. Generally, species favoring closed-canopy conditions with larger diameter trees are negatively affected when cutting results in grasslands or oak

woodlands with small diameter trees and open canopies. Conversely, species favoring grasslands or very open woodland are positively affected.

Felling of individual trees tends to be most significant outside woodland because the individual trees themselves, particularly veteran trees, are critical to the interest, for example in orchards, hedges and parkland [Read, H. (2000), The veteran tree management handbook (Peterborough, English Nature, 2000)]”

149. Now comes the question of damages on account of reforestation and restoration of environment and ecology. As per the affidavit filed by the forest department, in furtherance of the notice issued by the Tribunal on 20.11.2014, it has been stated that 477 trees of Deodar, Oak and other broad leaf species have been felled from the private land. We, therefore, direct that ten times of the trees felled i.e. 4770 saplings should be planted. According to the officer of the forest department, Smt. Richa Banchta (SW-1), the value of the trees cut is about 31 lakhs. The Chief Conservator of Forest, in his affidavit before the Tribunal has stated the expense for purchase of saplings, maintenance etc. as Rs. 24 lakhs. In order to ensure that reforestation is properly brought up, expenditure has to be incurred for taking due care to maintain the sapling for their growth. Persons have to be deployed for doing the miscellaneous works of watering, maintenance, to take care of the plants, etc. Therefore, in our view total amount of about Rs. 25 lakhs would be required for the purpose.

150. Several attempts have been made at putting economic value to the different environmental and ecosystem services

provided by the forest which cumulatively are covered in the assessment made by MoEF &CC in prescribing Net Present Value (NPV) of all direct and indirect benefits which the forest ecosystems provide.

Considering that the 477 trees of oak, deodar and other species illegally felled over an area of 38.5 bigha are a part of sub-tropical pine / broad leaved hill forests with a very dense and canopy cover, the existing NPV as prescribed is 9.39 lakh per hectare for a very dense forest. Infact, the Range Officer in her deposition has submitted that the tree cut were part of a very dense forest and, therefore the Net Present Value (NPV) of the ecosystem services provided by 477 trees over 38.5 bigas (which equals to 3.8 hectares) works out of Rs. 36.15 lakhs. Consequently, the total damages in this case, including value of trees, expenditure for plantation and other miscellaneous expenses for deploying persons, NPV, etc. would be 116 lakhs.

151. In view of the above detailed discussion and the fact that both the seller and the purchaser are the beneficiary of the illegal and unauthorized felling of trees which has caused immense adverse impact on the environment and ecology of the area, we are of the considered view and return a finding that both the seller and the purchaser are responsible for payment of the above determined environmental compensation in terms of Section 15 and 17 of the NGT Act,

2010. Further, it would be just and proper to make the seller liable to the extent of 60% and the purchaser to 40% of the total amount of damages to be paid. It is made clear that the amount of Rs. 20 lakhs paid by the seller, in compliance of the interim order passed by the Tribunal, shall be adjusted in the aforesaid total amount of her liability. Similarly, the amount of Rs. 10 lakhs already paid by the purchaser, under the orders of the Tribunal, shall be adjusted in the total amount of liability which he has to pay under this final order. The amount of damages shall be paid by the parties to the District Forest Officer, Rural Shimla, within one month from today.

152. To protect environment and ecology of the area from further deterioration, degradation, adverse impacts and to effectively implement the direction for afforestation, we induct the seller, purchaser or any person or body claiming through them from raising any construction, temporary or permanent or from carrying on any commercial or non-forest activities, upon the land from where the 477 trees have been felled illegally and unauthorizedly. The land shall be used only for the purposes of afforestation.

153. The findings recorded by the Tribunal in this judgement are without prejudice to rights and contentions of the parties which they may have in proceedings other than the proceedings before this Tribunal.

154. Consequently, Original Application No. 488/2014 is disposed of with the aforesaid directions. Original Application No. 170/2015 is dismissed as being devoid of merits. There shall be no order as to cost.

155. As the Original Application No. 455/2014 has been decided today, nothing remains to be adjudicated in M.A. No. 1085 of 2015. Consequently, M.A No. 1085/2015 is dismissed with no order as to cost.

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Justice Swatanter Kumar
(Chairperson)

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Justice Raghuvendra S. Rathore
(Judicial Member)

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Mr. Bikram Singh Sajwan
(Expert Member)

New Delhi.
Dated: 1st August, 2017

NGT