

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

Writ Petition(s) (Civil) No(s). 202/1995

IN RE : T.N. GODAVARMAN THIRUMULPAD

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

[ 2 ] [ i ] INTERLOCUTORY APPLICATION NO. 1254

[APPLICATION FOR DIRECTIONS]

In Re : Identification of 'Forest' in the State of Rajasthan

WITH

[ ii ] INTERLOCUTORY APPLICATION NO. 1336

[RECOMMENDATION OF CEC IN I.A.NO. 1254]

Date : 03-07-2018 These applications were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Mr. Harish N. Salve, Sr. Adv. [A.C.] [NP]

Mr. A.D.N. Rao, Advocate [A.C.]  
Mr. Sudipto Sircar, Adv.

Mr. Siddhartha Chowdhury, Advocate [A.C.]

Ms. Aparajita Singh, Advocate [A.C.] [NP]

For Respondent(S) Mr. A.N.S. Nadkarni, ASG  
Mr. S. Wasim A. Qadri, Adv.  
Mr. D.L. Chidanand, Adv.  
Mr. Ritesh Kumar, Adv.  
Mr. Saeed Qadri, Adv.  
Mr. A.K. Sharma, Adv.  
Mr. G.S. Makker, Adv.  
Mr. Ravindra Bana, Adv.  
Ms. Anil Katiyar, Adv.

Mr. D.N. Goburdhun, Adv.

Ms. Pallavi Chopra, Adv.

For S.No. [ 2 ]

Mr. S.S. Shamsbery, AAG

Mr. Ankit Raj, Adv.

Ms. Nidhi Jaiswal, Adv.

Ms. Indira Bhakar, Adv.

Ms. Ruchi Kohli, Adv.

UPON hearing the counsel the Court made the following

O R D E R

We have heard learned counsel for the State of Rajasthan as well as the learned *Amicus*. We have also gone through the Kapoor Committee Report dated 15.04.2004 and the Report of the Central Empowered Committee (CEC) dated 01.06.2005.

We have considered the objections of the State of Rajasthan with regard to recommendations made by the CEC and find no substance in it.

The State of Rajasthan has accepted Recommendation Nos. (i) and (iii) given by the CEC which read as follows:

(i) In respect of sacred groves such as Orans, De-vans etc. the Kapoor Committee has included only those areas in the category of 'forest' which also fulfill the criteria laid down for deemed forest i.e. having more than 200 trees per ha. A compact block of 5 ha. Or more. The remaining areas have been left out though they are recorded as Orans, De-vans etc. in government records. Traditionally Orans; Dev-vans and other sacred groves, irrespective of their size, have been treated as forest land in Rajasthan. This was also confirmed by the State of Rajasthan during the hearing held before the CEC. In view of above the CEC is of the view that exclusion of such areas from the category of 'areas recorded as forest in government records' on the ground that they do not fulfill the criteria of 'deemed forest' will be inconsistent with the orders of this Hon'ble Court and therefore, needs to include as 'forest land'. However, in case some of these small fragmented areas, which are difficult to manage have to be

excluded from the purview of the FC Act, 1980 the same may be done after following the procedure as laid down under the Act.

(iii) In Rajasthan large areas are arid areas which support scanty vegetation, grass lands or eco-systems, which have few large trees. Many of these areas represent various forms of climate eco-system such as grass, land, rocky outcrops, stony desert etc. which need to be treated as 'forest land'. If Hon'ble Supreme Court deems it fit the State of Rajasthan would constitute an Expert Committee consisting of representative of the Forest Department, Arid Zone Forestry Research Institute (AFRI), Central Arid Zone Research Institute (CAZRI) and representatives of various departments and expert bodies to identify areas which are representative of various types of desert eco-systems. Such areas may also be included in the category of 'deemed forest' irrespective of the vegetation supported by such areas. The Committee may adopt a rational criteria for this purpose and finalize its report within a period of six months.

In respect of Recommendation No. (ii), it is stated that the provisions of Forest Conservation Act, 1980 did not apply to any Forest Land diverted prior to date of its enactment i.e. 25.10.1980 and thus it is not necessary to get such areas diverted from the purview of the Forest Conservation Act after following due process. It is therefore prayed that the Kapoor Committee Report may be accepted with the said modification.

We find no substance in this submission. The lands that have already been diverted prior to the date of its enactment i.e. 25.10.1980 need to be clearly identified, surveyed, demarcated and diverted in accordance with law. We find no error in the recommendations made by the CEC nor do we find anything to set aside the recommendations made by the CEC. Recommendation No. (ii) of the CEC is also accepted which reads as follows:

(ii) The inclusion of areas recorded as 'Rundh' as 'forest' by the Kapoor Committee is appropriate and, therefore, may be accepted. However, a large chunk of such areas have been put under agriculture and other non forestry purpose prior to enactment of the FC Act i.e. 25.10.1980 and are being used for non-forestry purposes for last many decades. It may, therefore, be desirable that all such areas, diverted/used for non-forestry purposes prior to 25.10.1980 are identified and area deleted from the purview of the FC Act after following due process of law. These areas will have to be surveyed and demarcated in a time bound manner. For deletions of such areas from the purview of FC Act the MoEF may consider waiving the condition of compensatory afforestation. The payment of Net Present Value (NPV) may also not be insisted upon in such cases.

The I.As. stand disposed of.

We expect the State of Rajasthan to comply with the aforesaid three recommendations expeditiously in letter and spirit.

(MEENAKSHI KOHLI)  
COURT MASTER

(KAILASH CHANDER)  
COURT MASTER