

SUPREME COURT OF INDIA

REPORTABLE

Bench: Justices B.R. Gavai and Sandeep Mehta

Date of Decision: 16th May 2024

Case No.:

CIVIL ORIGINAL JURISDICTION

IA NO(S). 2930 OF 2010, 3963 OF 2017, 160714 OF 2019, 77320 OF 2023
AND 79064 OF 2023

WRIT PETITION (CIVIL) NO(S). 202 OF 1995

APPELLANT(S):

T.N. GODAVARMAN THIRUMULPADPetitioner

VERSUS

RESPONDENT(S):

UNION OF INDIA & ORS.Respondents

Legislation:

Wildlife (Protection) Act, 1972

Section 18(1)

Indian Constitution, 1950

Article 300A

Subject: Interlocutory applications concerning the applicant's request to construct a health/eco-resort on land within Pachmarhi Wildlife Sanctuary, raising issues about land rights, eco-sensitive zones, and compliance with environmental regulations.

Headnotes:

Land Rights – Permission for Construction – Applications filed by Shewalkar Developers seeking permission to construct a health/eco-resort on specified plots – Issues concerning whether land is within Pachmarhi Wildlife Sanctuary or an eco-sensitive zone (ESZ) – Chronology of land transactions and legal battles traced – State initially opposes construction citing ESZ notification – Supreme Court directs authorities to decide on application based on location

and ESZ boundaries – Permission subject to outcome of pending writ appeal concerning title of the land seller [Paras 1-26].

Wildlife Protection – ESZ Notification – Compliance with ESZ notification dated 9th August, 2017 necessary for any new constructions – Applicant argued land is beyond ESZ and in urban area – State's compliance affidavit confirmed plots are recorded as Nazul Land and fall within urban area – Authorities to decide construction application objectively considering ESZ notification and existing resorts in the vicinity [Paras 12-24].

Proprietary Rights – Article 300A – Applicant's proprietary rights under Article 300A upheld as title not challenged in prior litigations – Pending writ appeal not a valid ground to oppose construction – State and CEC objections based on ESZ notification addressed – Supreme Court mandates decision within two months and allows applicant to challenge adverse decisions [Paras 18-26].

Decision: Applications disposed of in terms – Authorities directed to decide construction application objectively within two months – Applicant's rights upheld subject to ESZ compliance and pending writ appeal outcome – No order as to costs [Paras 23-26].

Referred Cases:

- Godavarman Thirumulpad v. Union of India, 1995 SCC (1) 95
- Maharashtra Tourism Development Corporation v. Union of India, 2013 SCC OnLine SC 1123
- J.V. Ramana Reddy v. State of A.P., 2007 SCC OnLine AP 1207
- Bharat Petroleum Corporation Ltd. V. Maddula Ratnavalli, 2007 SCC OnLine SC 722

J U D G M E N T

Mehta, J.

1. These interlocutory applications have been preferred by the applicant M/s Shewalkar Developers Limited being aggrieved by the inaction of the respondents in deciding the application filed by the applicant seeking permission to construct a health/eco-resort on the subject land being Plot Nos. 14/3 and 14/4, falling in Sheet No. 20, Civil Station, Pachmarhi, District Hoshangabad, Madhya Pradesh. The total area of these two plots is around 59,265 sq. ft. and 49,675 sq. ft., respectively.

2. The applicant herein approached the Madhya Pradesh High Court by filing Writ Petition No. 14478 of 2006 seeking a direction to the respondents to favourably consider the prayer of the applicant. Vide order dated 22nd November, 2006, the Division Bench of Madhya Pradesh High Court permitted the applicant to approach the Central Empowered Committee(hereinafter being referred to as 'CEC') constituted under the directions given by this Court in Writ Petition(Civil) No. 202 of 1995. Consequently, the applicant preferred an application to the CEC seeking permission to construct the health/eco-resort on the land mentioned above asserting that the said chunk of land was not a forest land and had been acquired under valid title deeds and thus, the prayer for permission to construct may be allowed. However, the prayer made by the applicant was not accepted whereupon, the applications under consideration came to be filed before this Court.

3. The State Government had previously taken a stand in its counter that the land in issue falls within the limits of Pachmarhi Wildlife Sanctuary and therefore, by virtue of the directions issued by the CEC vide letter dated 2nd July, 2004, no commercial activity was permissible thereupon, without the permission of this Court.

4. Much water has flown during pendency of the original application(I.A. No.2930 of 2010) which has remained pending for almost 14 years. For sake of convenience, a chronological flow chart of dates and events is narrated hereinbelow in a tabular form: -

CHRONOLOGICAL FLOW CHART OF DATES AND EVENTS

BACKGROUND FACTS IN RELATION TO I.A. No.2930 of 2010		
S.No.	DATE	EVENT
1.	01.06.1977	The Government of Madhya Pradesh notified Pachmarhi Sanctuary under Section 18(1) of the Wild Life (Protection) Act, 1972 but did not specify/demarcate the area to be included/excluded in the Sanctuary.
2.	01.05.1991	The owner of the plots in question, Mr. Dennis Torry obtained permission to sale from the Government of Madhya Pradesh as required under Clause 16 of Chapter-IV Part 1 of Revenue Book Circular issued by the Government of Madhya Pradesh.
3.	13.09.1991	The applicant purchased the subject plots of land vide sale deed dated 13 th September,1991.
4.	10.05.1996	In light of order dated 10 th May,1996 passed by this Court in W.P.(C) No.262 of 1995, the State Government issued instructions to the Collector to expedite the proceedings of settlement of rights in National Parks/Sanctuaries.
5.	23.10.1996	In compliance of the abovementioned order, Collector, Hoshangabad made a proclamation

		under Section 21 of the Wild Life(Protection) Act, 1972 inviting claims from the affected persons.
6.	20.06.2000	After inviting claims and hearing the objections, Collector, Hoshangabad passed various orders determining the rights of the affected people and vide order dated 20 th June, 2000, Civil/Nazul area of Pachmarhi Town was excluded from the Sanctuary.
7.	15.12.2000	Application was preferred by the applicant seeking mutation based on registered sale deed dated 13 th September, 1991. The SDO directed the same to be mutated in the name of M/s Shewalkar Developers Ltd., through Ashutosh Shewalkar.
8.	2002	PIL bearing W.P No. 5937 of 2002 was filed before the High Court seeking directions to stop illegal construction activities in reserved/protected area at Pachmarhi, wherein a six-member Committee was constituted to examine the issue.
9.	15.01.2004	The High Court vide interim order passed in W.P. No. 5937 of 2002, directed that the order of exclusion of Cantonment and Civil/Nazul area of Pachmarhi Town and 33 revenue villages from the Pachmarhi Sanctuary and settlement of rights passed by the District Collector, Hoshangabad shall remain stayed until further orders.

10.	2005	The report of six-member Committee suggested that Nazul area within the administrative control of SADA and army cantonment area falling in Pachmarhi plateau may be considered to be deleted from the boundary of the Sanctuary.
11.	31.03.2005	The State Government following the advice of the State Wildlife Advisory Board moved the Government of India for seeking approval of National Board for Wildlife(NBWL) for excluding these areas.
12.	24.10.2005	The Standing Committee of the NBWL, vide letter dated 24 th October, 2005, recommended exclusion of cantonment and Civil/Nazul Area.

13.	2006	The applicant approached the High Court by filing W.P(C) No. 14478 of 2006, being aggrieved by inaction of the respondents in deciding the application seeking permission to construct health/eco-resort on the subject plots of land.
14.	22.11.2006	The High Court permitted the applicant to move an application before the CEC.

15.	22.02.2007	The applicant preferred an application before the CEC being I.A No. 1008 of 2007.
16.	19.09.2008	The CEC submitted a report dated 16 th /19 th September, 2008 before this Court, in IA Nos.2202-2203 of 2007, filed by the Cantonment Board.
17.	29.03.2010	The CEC considered the application filed by the applicant seeking permission to construct health/eco-resort and observed that an affidavit dated 1st February, 2010 has been filed by the State Government clearly stating that the applicant's land falls within the Sanctuary and was purchased in violation of the Wild Life(Protection) Act, 1972. The CEC also intimated the applicant that no recommendation could be passed by it in absence of an order passed by the Supreme Court.
I.A. No.2930 of 2010 CAME TO BE FILED BEFORE THIS COURT		
S.No.	DATE	EVENT
1.	2010	Aggrieved by the order of CEC, the applicant approached this Court by filing I.A. No.2930 of 2010.

2.	2011	Government of Madhya Pradesh filed an affidavit before this Court stating that Pachmarhi Township may be excluded from the forest area of Pachmarhi Sanctuary so that difficulties of the residents of Pachmarhi Township can be sorted out.
3.	12.08.2013	This Court accepted the recommendations of the CEC for excluding 395.939 Ha. land of

		Civil/Nazul area from the sanctuary in which the subject plots are situated.
4.	15.04.2017	The applicant moved I.A. No.3963 of 2017, seeking to place additional documents on record depicting functional resorts and hotels around the area where the applicant's plot is situated.
5.	09.08.2017	The Ministry of Environment, Forest and Climate Change issued ESZ notification.
6.	16.04.2018	This Court de-tagged I.A. Nos.2929-2931 of 2010 filed by the applicant herein from other I.A.s concerning the cantonment area.
7.	04.10.2018	This Court allowed the application for impleadment for the purposes of directions and the application to place additional documents on record.

8.	19.08.2019	The State Government was directed to file reply to the interlocutory applications.
9.	27.09.2019	This Court directed that response be filed by the State of Madhya Pradesh as well as by the CEC.
10.	13.11.2019	The CEC was directed to examine the matter and submit its report.
11.	16.06.2020	The CEC filed its report before this Court, in terms of orders passed by this Court objecting to the permission sought for by the applicant for constructing health/eco-resort on the plots.
12.	22.11.2023	This Court directed the Collector, Hoshangabad to file an affidavit annexing therewith a map of the aforesaid area of 395.939 hectares specifying as to whether the land belonging to the applicant(s) is within those 395.939 hectares or beyond it. The applicant was directed to place on record as to whether it has obtained the necessary permission for acquiring the land.
13.	13.04.2023	The applicant moved I.A. No.79064 of 2023, seeking leave to amend the I.A. No.2930 of 2010, in light of the CEC report dated 16 th June, 2020.

14.	12.02.2024	The State Government filed compliance affidavit in terms of order dated 22 nd November, 2023.
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5. Another litigation took place regarding other transactions of land done by Dennis Torry and it will be essential to trace the history thereof. Chronological list of events in relation to the plot are being narrated hereinbelow for the sake of ready reference: -

5.1 The District Collector, Hoshangabad registered *suo moto* revisions against the mutation orders issued in favour of Kripa Torry and Sanjay Bhandari(purchasers of land from Dennis Torry) and vide order dated 9th August, 2004, these revisions were allowed holding that the transfer of land by the perpetual land holder Rodrigues in favour of Dennis Torry on 8th September, 1977 was illegal and without force of law and thus, mutation of land in favour of Dennis Torry was illegal. The transfer and consequent mutation in favour of Sanjay Bhandari and Shri Kripa Torry(son of Dennis Torry) was quashed and set aside by the District Collector vide order dated 9th August, 2004.

5.2 The aforesaid order was challenged by the purchasers by filing an appeal to the Board of Revenue, Madhya Pradesh which came to be allowed and the order dated 9th August, 2004 passed by the District Collector was quashed by learned Single Member, Board of Revenue vide order dated 16th April, 2007.

5.3 The Chairman of Revenue Board registered a *suo moto* revision and vide order dated 15th March, 2011, set aside the order passed by the learned Single Member.

5.4 The land owners Shri Sanjay Bhandari and Shri Kripa Torry preferred a Writ Petition No. 8098 of 2011 for questioning the legality of order dated 15th March, 2011 and the said writ petition was allowed by the learned Single Judge of the Madhya Pradesh High Court vide order dated 3rd January, 2014 thereby, reversing the order dated 15th March, 2011 passed by the Board of Revenue.

6. This Court is apprised that the State has preferred an appeal(Writ Appeal No. 2100 of 2019) against the order passed by the learned Single

Judge which is still pending adjudication and no order of stay is passed in the said writ appeal.

7. The CEC has submitted a report dated 16th June, 2020 in these proceedings objecting to the permission sought by the applicant. The applicant has also filed objection to the report of the CEC.

8. The issue which has now been raised by the State of Madhya Pradesh is with respect to the identification of the land owned by the applicant contending that the same forms a part of the Pachmarhi Wildlife Sanctuary. Considering the above contention, this Court raised the following query on 22nd November, 2023: -

“2. We, therefore, direct the Collector, Hosangabad to file an affidavit annexing therewith a map of the aforesaid area of 395.939 hectares and also specify as to whether the land belonging to the applicant(s) is within those 395.939 hectares or beyond that area.”

9. In compliance of the said direction, an affidavit has been filed on behalf of the State of Madhya Pradesh (also referred to as, ‘compliance affidavit’). The relevant portions thereof are extracted hereinbelow: -

“2. That, this Hon'ble Court has raised following queries to the respondent/State of M.P.:-

(i) To annex the map demarcating an area of 395.939 hectares of the Nazul Land falling in the Panchmarhi Plateau, which was to be excluded from the Panchmarhi Wildlife Sanctuary as per order dated 12.08.2013 passed by this Hon'ble Court in I.A. No.2202-2203.

In respect of aforesaid, it is pertinent to mention here that the said map demarcating an area of 395.939 hectares of Nazul Land falling in the Panchmarhi Plateau, the Plot No.14/3 area 59255 sq. ft. and 14/4 area 49365 sq. ft. are excluded from Panchmarhi Wildlife Sanctuary and the same are within the area of 395.939 hectares and recorded as Nazul Land in the name of State of M.P.

A true copy of colored map of is being marked and filed herewith as **Annexure A-1**.

(ii) The Collector Hosangabad was directed to file an affidavit annexing therewith a map of the aforesaid area of 395.939 hectares and also

specify as to whether the land belonging to the applicant is within those 395.939 hectares or beyond that area.

In respect of aforesaid, it is pertinent to mention here that the Collector, Hoshangabad vide affidavit dated 06.01.2024 stated that the land mentioned, NazulBhumi Sheet No.20, Plot No.14/3 and 14/4, area 59255 sq. ft. and 49365 sq. ft. total area 108900 sq. ft. is situated in Panchmarhi and recorded as maintenance Khasra in the Government of M.P. **The plot No.14/3, 14/4 is within the area of 395.939 hectares which was excluded from the Panchmarhi Wildlife Sanctuary.**

2. That, it is respectfully submitted that in respect of Plot No.14/3 and 14/4 a report was sought from Sub-Divisional Officer, Revenue, Pipariya whereby it was reported that Plot No.14/3 and 14/4 are recorded in name of State of M.P. in Sheet No.20 of Nazul Maintenance Khasra No.2023-24, **said land of Plot No.14/3 and 14/4 is vacant on the spot, there is no kind of construction over there, said plots are situated under urban area of Panchmarhi. Moreover, the permission for construction/re-construction in the Cantonment Board, Panchmarhi lies under the jurisdiction of Chief Executive Officer, Cantonment Board, Panchmarhi and the permission for construction/re-construction in the Special Area Development Authority (SADA), Panchmarhi lies with the jurisdiction of Chief Executive Officer, Special Area Development Authority (SADA), Pachmarhi, In respect of above, no permission for construction/re-construction was issued by the Tehsildar, Pipariya.**

8. That, on 03.01.2014, the Hon'ble High Court of M.P. at Jabalpur passed an order in W.P. No.8098/2018 in petition filed by Kripa Tori and others challenging the order dated 15.03.2011 of the Board of Revenue. The Hon'ble High Court set aside the order dated 15.03.2011 and thereby restored the previous order dated 22.07.1995 whereby the order of the Nazul Adhikari had been affirmed.

A true copy of the order dated 03.01.2014 passed by the Hon'ble High Court of M.P. at Jabalpur in Writ Petition No.8098/2011 is being marked and filed herewith as **Annexure A-9**.

It is pertinent to mention here that the aforesaid order dated 03.01.2014 of the Hon'ble High Court is in respect of Plot No.14/1 and 14/2 whereas the applicant herein is claiming relief in respect of Plot No.14/3 and 14/4

which were purchased by Ashutosh S/o Shriram Shewalkar and M/s Shewalkar

Developers Pvt. Ltd. on 13.09.1991. The said Plot No.14/3 and 14/4 at present are recorded in the name of State of M.P. as Nazul Land. The State of Madhya being aggrieved with the order dated 03.01.2014 has filed an appeal before the Division Bench of the Hon'ble High Court which is pending adjudication as Writ Appeal No.2100/2019.

9. That, it is submitted here that the said proceedings before the Hon'ble High Court pertains to Kripa Tori &Ors. and the present intervenor M/s Shewalkar Developers was not a party before any of the Revenue Courts or the High Courts.

10. That, as per notification dated 19.08.2017, the area under the entire Pachmarhi region admeasuring 1532.521 hectares has been declared as "Eco-sensitive Zone" and the Plot No.14/3 and 14/4 fall within the notified boundaries of said notification.

11. That, in view of notification dated 09.08.2017 "no new resort can be constructed and only repairs etc. can be done". Moreover, the Hon'ble High Courtvide interim order dated 01.11.2002 in W.P. No.5937/2002 stayed the construction by making following observation:-

"Subject to hearing other side, further construction in and around Pachmarhi Hill Resort is stayed till further order".

The aforesaid clarification about stay order being applicable only to new construction has been reiterated by the Hon'ble High Court in its order dated 22.01.2004 in following words:-

"By further order dated 13.07.2004, the interim order was clarified that the order of stay will not come in the way of repairing of roads by the State or carrying out repairs to existing building by respective provided, however, that repairs work of any building can be undertaken only after taking due permission from the concerned authority."

(emphasis supplied)

10. Shri D.S. Naidu, learned senior counsel representing the applicant drew the Court's attention to the order dated 15th December, 2000 passed by the Department Officer(SDO), Pipariya on the application preferred by the applicant seeking mutation based on a registered sale deed dated 13th

September, 1991 executed by the land owner Dennis Torry in favour of the applicant. The SDO accepted the said application taking note of the fact that Plot No.14 admeasuring 3,23,365 sq. ft. was entered in the name of Dennis Torry who sought and was granted permission to sell the plot in question, by the Government of Madhya Pradesh vide order dated 1st May, 1991. Thereafter, by a registered sale deed dated 13th September, 1991, Dennis Torry had sold the subject plots of land to Ashutosh Shewalkar on behalf of the applicant company. Consequently, the SDO directed that the land sold by Dennis Torry should be mutated in the name of M/s Shewalkar Developers Ltd. through Ashutosh Shewalkar, resident of Nagpur. There is no dispute that the aforesaid order passed by the jurisdictional Revenue Officer in favour of the applicant has not been questioned in any Court of law.

11. Shri Naidu also drew the Court's attention to the report of the CEC dated 16th June, 2020, as per which the permission to construct has been denied to the applicant on the ground that the State of Madhya Pradesh had filed an affidavit stating that the land falls in the Pachmarhi Wildlife Sanctuary and that the same had been purchased in violation of the provisions of the Wild Life(Protection) Act, 1972.

12. Shri Naidu contended that this objection raised by the State with reference to the Eco Sensitive Zone(hereinafter being referred to as 'ESZ') notification dated 9th August, 2017 is totally against the material available on record. He drew the Court's attention to the site map dated 26th December, 2023(Annexure A-1 annexed with the compliance affidavit dated 12th February, 2024 filed by the respondent-State of Madhya Pradesh) to contend that as a matter of fact, the land owned by the applicant is located right on the periphery of the Nazul land, at a distance of about 10 kms. from the forest area and therefore, the same is well beyond the ESZ area.

13. Shri Naidu further submitted that in view of the categoric assertion made in the compliance affidavit dated 12th February, 2024, filed on behalf of the State, it is clear that the plots in question are located in the urban area of Pachmarhi and thus, there is no question of these plots being covered either under the wildlife sanctuary or the ESZ area. He thus urged that the applicant deserves the relief sought for.

14. *Per contra*, learned counsel appearing for the respondents have opposed the submissions advanced by Mr. Naidu. Learned counsel for the State of Madhya Pradesh urged that the plots in question are subject matter of litigation in the writ appeal pending before the Division Bench of the

Madhya Pradesh High Court and thus, the applicant should await the outcome of the aforesaid writ appeal before seeking permission to construct the health/ecoresort on the land in question.

15. His further contention was that the plots in question are recorded in the name of the State of Madhya Pradesh and hence, the applicant cannot claim any right thereupon.

16. Mr. K. Parameshwar, learned Amicus Curiae appearing on behalf of the CEC submitted that in view of the ESZ notification dated 9th August, 2017, permission to raise a new construction on the land in question cannot be granted and whatever permissions are sought for, have to be routed through the CEC.

17. Learned counsel appearing for the Union of India adopted the submissions advanced by the standing counsel for the State and learned Amicus Curiae.

18. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the material placed on record.

19. It is not in dispute that the applicant herein was never impleaded in any of the proceedings before the Revenue Courts or the High Court as has been emphatically stated in Para-9 of the compliance affidavit dated 12th February, 2024. It is thus, clear that irrespective of the fact that the order passed by the District Collector dated 9th August, 2004, purportedly covers entire area of the Plot No. 14 and the transactions done in favour of and by Dennis Torry, the sale deed executed in favour of the applicant and the mutation made in its name had never been questioned in any Court of law. Neither the Revenue Department nor the State Government authorities took the trouble of impleading the applicant as party in any of the abovementioned litigations. The title acquired by the applicant over the subject plots not having been challenged, attained finality and thus the State cannot claim a right thereupon simply because at some point of time, the plots came to be recorded as Nazul lands in the revenue records. The categorical stand in the compliance affidavit filed by the State(reproduced *supra*) fortifies the claim of the applicant that these plots are falling under the urban area.

20. In this background, the applicant is justified in claiming that its proprietary rights guaranteed under Article 300A of the Constitution of India cannot be infringed merely on account of the pending writ appeal before the Madhya Pradesh High Court.

21. Resultantly, we are of the firm opinion that the permission sought by the applicant for raising construction of health/ecoresort cannot be opposed only on account of pendency of the writ appeal before the Madhya Pradesh High Court. However, it can be said without a cavil of doubt that activities, if any, on the Plot Nos. 14/3 and 14/4 purchased by the applicant from Dennis Torry would have to be carried out strictly in accordance with the ESZ notification dated 9th August, 2017, issued by the Ministry of Environment, Forest and Climate Change. Nonetheless, the applicant would be at liberty to satisfy the authorities that the plots in question are beyond the Eco-Sensitive Zone.

22. Furthermore, since the writ appeal pending before the Madhya Pradesh High Court arises out of the orders passed in relation to the title rights of Dennis Torry, from whom the applicant purchased the plots in question, the activities, if any, undertaken by the applicant on the said plot of land would also remain subject to the outcome of the said writ appeal.

23. We, therefore, direct that the application filed by the applicant for raising construction on plot Nos. 14/3 and 14/4 shall be decided objectively by the CEC/Competent Authority of the local body keeping in view the location of the land with reference to the notified boundaries of the ESZ.

24. While deciding the application filed by the applicant, the authorities shall also bear in mind the fact that it is the pertinent case presented before this Court that a large number of resorts of Madhya Pradesh Tourism Development Corporation and Special Area Development Authority(SADA) are existing on areas abutting the land owned by the applicant.

25. The application/s shall be decided within a period of two months from today. Needless to say, that in the event of any adverse orders being passed, the applicant shall be at liberty to challenge the same as per law.

26. The applications are disposed of in above terms. No order as to costs.

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