

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (Civil) No 1164 of 2023

**Ashok Kumar Sharma, Indian Forest Service
(Retired) and Others**

... Petitioners

Versus

Union of India and Another

... Respondents

W I T H

Writ Petition (Civil) No 1336 of 2023

Writ Petition (Civil) No 1375 of 2023

Writ Petition (Civil) No 42 of 2024

Writ Petition (Civil) No 85 of 2024

O R D E R

1 In ***T N Godavarman Thirumulpad vs Union of India***¹, this Court while noting that the Forest Conservation Act 1980 was enacted to curb the deforestation which results in an ecological imbalance, indicated that the

1 (1997) 2 SCC 267

provisions incorporated to conserve forests and for other connected matters “must apply to all forests irrespective of the nature of ownership or classification”. Apart from the above principle, the Court spelt out in paragraph 4 of the order, the meaning which must be attributed to the expression ‘forest’. For convenience of reference, it would be appropriate to disaggregate the contents of paragraph 4 so as to indicate the components of the expression ‘forest’ as explained in the order of this Court:

Firstly, the decision in ***T N Godavarman*** (*supra*) indicates that expression ‘forest’ must be understood according to its dictionary meaning;

Secondly, the description of the expression ‘forest’ would cover all statutorily recognized forests whether they are designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act 1980;

Thirdly, besides including forests as understood in the dictionary sense, the term ‘forest’ in Section 2 would include “also any area recorded as forest in the government record irrespective of the ownership”; and

Fourthly, the provisions for the conservation of forests and ancillary matters in the Forest Conservation Act 1980 must apply to all forests “so understood” irrespective of ownership or classification.

- 2 The directions which were issued by this Court, included the following:
- (i) The necessity of prior approval of the Central Government for any non-forest activity within the area of any “forest”; and
 - (ii) A mandamus to the State Governments to constitute Expert Committees to:
 - (a) Identify areas which are forests irrespective of whether they are so notified, recognized or classified under any law and irrespective of the ownership of the land;
 - (b) Identify areas which were earlier forests, but were degraded, denuded or cleared; and
 - (c) Identify areas covered by plantation trees belonging to the government and those belonging to private persons.
- 3 Further directions were issued in the judgment of this Court in ***T N Godavarman Thirumulpad vs Union of India [Lafarge Umiam Mining Private Limited - Applicant]***².
- 4 The process of identification of forests was crucial to the implementation of the directions which were issued by this Court. The purpose of identification was to ensure that the areas which fell within the description of ‘forests’ as

2 (2011) 7 SCC 338

explained in the decision would be capable of being preserved upon the process of identification being carried out under the auspices of Expert Committees in every State.

- 5 In this batch of petitions, there is a challenge to the constitutional validity of the Forest Conservation Amendment Act 2023 (Act No 15 of 2023).
- 6 Section 4 of the Amending Act has introduced Section 1A after Section 1 of the principal Act in the following terms:

“4. After section 1 of the principal Act, the following section shall be inserted, namely:—

‘1A. (1) The following land shall be covered under the provisions of this Act, namely:—

- (a) the land that has been declared or notified as a forest in accordance with the provisions of the Indian Forest Act, 1927 or under any other law for the time being in force;
- (b) the land that is not covered under clause (a), but has been recorded in Government record as forest, as on or after the 25th October, 1980:

Provided that the provisions of this clause shall not apply to such land, which has been changed from forest use to use for non-forest purpose on or before the 12th December, 1996 in pursuance of an order, issued by any authority authorised by a State Government or an Union territory Administration in that behalf.

Explanation.—For the purposes of this sub-section, the expression "Government record" means record held by Revenue Department or Forest Department of the State Government or Union territory Administration, or any authority, local body, community or council recognised by the State Government or Union territory Administration.

(2) The following categories of land shall not be covered under the provisions of this Act, namely:—

(a) such forest land situated alongside a rail line or a public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case;

(b) such tree, tree plantation or reforestation raised on lands that are not specified in clause (a) or clause (b) of sub-section (1); and (c) such forest land,—

(i) as is situated within a distance of one hundred kilometres along international borders or Line of Control or Line of Actual Control, as the case may be, proposed to be used for construction of strategic linear project of national importance and concerning national security; or

(ii) up to ten hectares, proposed to be used for construction of security related infrastructure; or

(iii) as is proposed to be used for construction of defence related project or a camp for paramilitary forces or public utility projects, as may be specified by the Central Government, the extent of which does not exceed five hectares in a Left Wing Extremism affected area as may be notified by the Central Government.

(3) The exemption provided under sub-section (2) shall be subject to such terms and conditions, including the conditions of planting trees to compensate felling of trees undertaken on the lands, as the Central Government may, by guidelines, specify.”

7 Sub-section (1) of Section 1A, as introduced, indicates that two categories of lands are sought to be covered under the provisions of the parent enactment, namely, (i) lands which have been declared or notified as forests under the Act of 1927 or any other law for the time being in force; and (ii) lands not covered by (i) but which are recorded in government records as forests on or after 25 October 1980. An exception is provided in the proviso

as set out above. The Explanation indicates that for the purpose of sub-section (1) of Section 1A, 'government records' would mean records held by the Revenue department or forest department of the State or Union Territory or any authority, local body, community or council recognized by the State Government.

- 8 The amendment is in challenge on the ground that while the dictionary meaning of the expression 'forests' which was adopted in ***T N Godavarman*** (*supra*) provided a broad and all encompassing meaning to the expression, the amendment circumscribes the coverage of the statute to two categories falling in clauses (a) and (b) of sub-section (1) of Section 1A. As a consequence, it has been submitted that whereas the total coverage of forests in the country is expected to be in the vicinity of 7.13 lakhs square kilometers, about 1.97 lakh square kilometers would stand excluded by the constriction of the coverage by the amending legislation.
- 9 Rule 16 of the Rules which were notified on 29 November 2023 deals with 'miscellaneous matters' and provides that for the purpose of the explanation of the expression 'government records' in sub-section (1) of Section 1A, the State Governments and the Union Territory administrations shall within a period of one year prepare a consolidated record of such lands, including (i) 'forest like areas' identified by the Expert Committee constituted for this purpose; (ii) 'unclassed forest lands'; and (iii) 'community forest lands' to which the provisions of the Amending Act would be applicable. The

provisions of Rule 16(1) are footnoted³ below.

- 10 Sub-Rule 4 of Rule 16 indicates that for the purpose of forest cover under the Rules, the figures and description used in the latest India State of Forest Report published by the Forest Survey of India shall be referred.
- 11 Mr Prashanto Chandra Sen, senior counsel and Mr Prashant Bhushan, counsel for the petitioners have submitted that the application of the provisions of amended Section 1A is likely to result in a substantial dilution of the coverage of lands protected as forests under the broad definition adopted in the judgment of **T N Godavarman** (*supra*). On the other hand, the argument of the Union of India, as set forth by Ms Aishwarya Bhati, Additional Solicitor General, is that the purpose of introducing the amendment and the Rules as noted above was not to constrict the definition as adopted by this Court, but to implement the decision. In other words, the case of the Union of India is that the coverage which has been statutorily provided for in Section 1A as well as Rule 16 is in furtherance of the above decision of this Court.
- 12 On 30 November 2023, this Court, in the course of the preliminary hearing, noted the submissions which were urged on behalf of the petitioners which have been reiterated in the submissions urged at this hearing.

3 16. **Miscellaneous**.- (1) For the purpose of explanation of government records provided under sub-section (1) of Section 1A of the Adhinyam, the State Governments and Union Territory Administrations, within a period of one year, shall prepare a consolidated record of such lands, including the forest like areas identified by the Expert Committee constituted for this purpose, unclassed forest lands or community forest lands on which the provisions of the Adhinyam shall be applicable.

- 13 At that stage, a statement was made by the Additional Solicitor General appearing on behalf of the Union Government that “there is no intention to dilute the scope of forest as defined in the judgment of this Court in **T N Godavarman** (*supra*)”. Hence, it was also stated that the exemptions which would be granted under sub-section (2) of Section 1A would accord with the guidelines which may be spelt by the Union Government. The Union Government, the Court was informed, was in the process of formulating the guidelines, but in order to allay the apprehensions of the petitioners, a statement was made by the Additional Solicitor General that no precipitate action will be taken by the Union Government “until further orders in respect of the forest as understood in accordance with the dictionary sense”.
- 14 The decision in **T N Godavarman** (*supra*) needs to be understood from two perspectives. First, the expression ‘forest’ was read in a broad sense bearing in mind the object and purpose of the Forest Conservation Act 1980. While adopting the dictionary meaning of the expression ‘forest’, the Court intended to impart a purposive interpretation to the phrase so as to accord with the intent underlying the enactment of the law in 1980. Hence, the Court clarified that this would cover but not be confined only to lands recorded as forest in government records. Moreover, the expression ‘forest’ would be independent of the nature of ownership or title.

- 15 As regards the modalities for implementing the directions, the decision of this Court envisaged that all State Governments would constitute Expert Committees in order to identify forests as understood in the judgment. Proper implementation of the directions would take place once such a process of identification was made.
- 16 By the amending statute, the coverage of the Act has been extended to two categories. The first category consists of lands which have been declared or identified as forests in accordance with the Indian Forest Act or any other law for the time being in force. The second category consists of lands which have not been so declared or notified but which are recorded in government records as forests on or after 25 October 1980. The Explanation somewhat broadens the definition of the expression government records so as to include lands recorded either in the records of the Revenue or Forest departments of the States or Union Territories or any other authorities, local bodies, communities or council recognized by the State/Union Territories.
- 17 Rule 16 to which a reference has been made above requires the States and the Union Territory Administrations to prepare a consolidated record of such lands for the purpose of the explanation of government records under subsection (1) of Section 1A. This would include forest like areas identified by the Expert Committees for this purpose, unclassed forest lands or community forest lands to which the provisions of the amended statute would be applicable. Such an exercise is to be carried out within a period of one year.

It is thus evident that the exercise which is to be carried out by the State Governments and the Union Territory Administrations is expected to be completed within that period. However, there is a need to impart clarity to the position as it should obtain pending such a determination and beyond. The position must be governed by the directions which were issued by this Court in **T N Godavarman** (*supra*), which have held the field for over twenty-five years.

- 18 Both in the submissions at the preliminary hearing on 30 November 2023, as well as in the submissions which were urged during the course of the present hearing, it is not the contention of the Union Government that the statutory amendment seeks to bring about any change in the law which was laid down in **T N Godavarman** (*supra*). That apart, both the counsel for the petitioners have adverted to the stand of the Government before the Joint Parliamentary Committee which preceded the enactment of the law and the clear elaboration of the Union of India that the proposed coverage in the legislative provision which was under consideration, would accord with the decision of this Court. That being the position, we clarify that pending the completion of the exercise by the Administrations of the State Governments and the Union Territories under Rule 16 and pending these proceedings, the principles which are elucidated in the judgment of this Court in **T N Godavarman** (*supra*) must continue to be observed.

- 19 As a matter of fact, it is evident that Rule 16 includes within its ambit forest like areas to be identified by the Expert Committee, unclassified forest lands; and community forest lands. While being guided by the provisions of the statute and those contained in Rule 16, the State Governments as well as Union Territory Administrations shall peremptorily ensure compliance with the ambit of the expression 'forest' as explained in the decision in **T N Godavarman**.
- 20 The Union Ministry of Environment and Forest shall in pursuance of the interim order issue a circular to all the States and the Union Territory Administrations to act strictly in accordance with the present directions. This shall be issued within two weeks.
- 21 Apart from the above interim direction, it must be noted that following the decision in **T N Godavarman**, Expert Committees were required to be constituted by all the States (and Union Territory Administrations). The reports of the Expert Committees is crucial for the maintenance of a contemporaneous public record of lands which were identified as forests within the ambit of that expression as explained in the decision of this Court. The Union of India through the Ministry of Environment, Forest and Climate Change shall within a period of two weeks from the date of this order require all the States and the Union Territory Administrations to provide to it a comprehensive record of lands which have been identified as forests by the Expert Committees constituted by the State Governments/Union Territories

in pursuance of the directions in **T N Godavarman**.

- 22 All States and Union Territory Administrations shall comply with the present direction by forwarding records of the reports of the Expert Committees to MoEFCC no later than by 31 March 2024. These records shall be maintained by MoEFCC and shall be duly digitized and made available in the electronic format on the website of the MoEFCC no later than by 15 April 2024.
- 23 The Expert Committees which are constituted in pursuance of Rule 16 by the States/Union Territory Administrations shall duly bear in mind the work of identification which was carried out by the Expert Committees in pursuance of the directions in **T N Godavarman**. This shall however not preclude the Expert Committees from expanding the ambit of forest lands which are worthy of protection particularly having regard to the coverage as specified in Section 1A of the amended statute read with Rule 16(1).
- 24 Apart from the above directions, the attention of the Court has been drawn to the provisions contained in Section 5 of the Amending Act of 2023 which is in the following terms:

“5. In the principal Act, section 2 shall be renumbered as sub-section (1) thereof and—

(a) in sub-section (1) as so renumbered,—

(l) in clause (iii), for the words "not owned, managed or controlled by Government", the words ", subject to such terms and conditions, as the Central Government may, by order, specify" shall be substituted;

(II) in the Explanation, for the long line occurring after clause (b), the following shall be substituted, namely:— but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as—

(i) silvicultural operations including regeneration operations;

(ii) establishment of check-posts and infrastructure for the front line forest staff;

(iii) establishment and maintenance of fire lines;

(iv) wireless communications;

(v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;

(vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in forest areas other than protected areas;

(vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and

(viii) any other like purposes, which the Central Government may, by order, specify.";

(b) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose."

- 25 Our attention is drawn to the fact that a co-ordinate Bench of this Court presided over by Hon'ble Mr Justice B R Gavai has reserved orders on the subject. Specifically, with reference to clause (6) above, we issue an interim order to the effect that any proposal for the establishment of zoos and safaris referred to in the Wile Life Protection Act 1972, enacted by the Government or any authority in forest areas other than protected areas, shall not be finally approved by the States/Union Territories, save and except with the prior permission of this Court. Where any such proposal is sought to be implemented, this Court shall be moved by the Union Government or, as the case may be, the competent authority for the prior approval of this Court. This part of the interim direction will hold the field only till the final judgment of the co-ordinate Bench. Necessarily therefore the judgment of the co-ordinate Bench shall govern the arena, once it is pronounced.
- 26 The Petitions shall now be listed for hearing and final disposal in the month of July 2024.
- 27 Mr Kaushik Chaudhary, Advocate-on-Record for the petitioner and Ms Suhasini Sen, counsel instructing the Additional Solicitor General are nominated as nodal counsel to prepare a consolidated compilation in the electronic form in terms of the Circular dated 22 August 2023.
- 28 The written submissions on behalf of the petitioners shall be provided to the nodal counsel no later than 30 April 2024. The written submissions of the

Union Government in response shall be provided no later than 30 June 2024 to the nodal counsel. The common compilation duly indexed shall be prepared in terms of the above circular and shall be emailed to cmvc.dyc@gmail.com.

IA No 5280 of 2023 In Writ Petition (Civil) No 1336 of 2023

- 1 The application for impleadment is allowed.
- 2 Liberty to serve the Standing Counsel for the newly impleaded States. They shall file their counter affidavit by 31 May 2024.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
February 19, 2024
CKB

ITEM NO.22

COURT NO.1

SECTION PIL-W

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 (Civil) No.1164/2023

ASHOK KUMAR SHARMA, INDIAN FOREST SERVICE
(RETD) & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With IA No.10020/2024 - APPROPRIATE ORDERS/DIRECTIONS, IA No.214764/2023 - STAY APPLICATION and IA No.240922/2023 - STAY APPLICATION)

WITH W.P.(C) No.1336/2023 (PIL-W)

(With IA No.5280/2024 - INTERVENTION/IMPLEADMENT, IA No.10426/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.247593/2023 - STAY APPLICATION)

W.P.(C) No.1375/2023 (PIL-W)

W.P.(C) No.42/2024 (PIL-W)

(With IA No.14901/2024 - GRANT OF INTERIM RELIEF)

W.P.(C) No.85/2024 (PIL-W)

(With IA No.30155/2024-EXEMPTION FROM FILING O.T.)

Date : 19-02-2024 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s)
WPC 1164/2023
Mr. Prashanto Chandra Sen, Sr. Adv.
Mr. Kaushik Choudhury, AOR
Ms. Shibani Ghosh, Adv.
Mr. Jyotirmoy Chatterjee, Adv.
Ms. Khyati Jain, Adv.
Ms. Akshata Chhabra, Adv.
Mr. Yogesh Malik, Adv.
Mr. Saksham Garg, Adv.

WPC 1336/2023
Mr. Satyajit Sarna, Adv.
Mr. Prashant Padmanabhan, AOR
Ms. Reaa Mehta, Adv.
Mr. Vishal Sinha, Adv.

WPC 42/2024
Mr. Prashant Bhushan, AOR
Ms. Neha Rathi, Adv.
Ms. Kajal Geri, Adv.
Mr. Kamal Kishore, Adv.

WPC 1375/2023
Mr. Balaraj Malik, Adv.
Mr. R.C. Kaushik, AOR

WPC 85/2024
Mr. Shyam Divan, Sr. Adv.
Ms. Madhusmita Bora, AOR
Mr. Riju Raj Singh Jamwal, Adv.
Mrs. Madhur Dadlani, Adv.
Mr. Dipankar Singh, Adv.

For Respondent(s)
Ms. Aishwarya Bhati, ASG
Mr. Gurmeet Singh Makker, AOR
Ms. Ruchi Kohli, Adv.
Ms. Bani Dixit, Adv.
Mr. Rajat Nair, Adv.
Mr. Sridhar Pottaraju, Adv.
Mr. Kanu Agarwal, Adv.

Dr. N. Visakamurthy, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 In terms of the signed order, the Petitions shall now be listed for hearing and final disposal in the month of July 2024.
- 2 Mr Kaushik Chaudhary, Advocate-on-Record for the petitioner and Ms Suhasini Sen, counsel instructing the Additional Solicitor General are nominated as nodal counsel to prepare a consolidated compilation in the electronic form in terms of the Circular dated 22 August 2023.
- 3 The written submissions on behalf of the petitioners shall be provided to the nodal counsel no later than 30 April 2024. The written submissions of the Union Government in response shall be provided no later than 30 June 2024 to the nodal counsel. The common compilation duly indexed shall be prepared in terms of the above circular and shall be emailed to cmvc.dyc@gmail.com.

IA No 5280 of 2023 In Writ Petition (Civil) No 1336 of 2023

- 1 The application for impleadment is allowed.
- 2 Liberty to serve the Standing Counsel for the newly impleaded States. They shall file their counter affidavit by 31 May 2024.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar
(Signed order is placed on the file)