

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SHRI VIPIN SANGHI

AND

HON'BLE JUSTICE SHRI ALOK KUMAR VERMA

WRIT PETITION NO. 178 of 2021 (PIL)

Suo Motu PIL: In the matter of illegal construction
In Corbett Tiger Reserve ...Petitioner

Versus

Union of India and Others ...Respondents

Counsel for the respondent : Mr. V.K. Kaparuwan, Standing
no.1/Union of India Counsel

Counsel for the State : Mr. Atul Sharma, Special
of Uttarakhand Counsel with Mr. Rajeev Singh
Bisht, Additional Chief
Standing Counsel with Mr.
Gajendra Tripathi, Standing
Counsel.

Counsel for the respondent : Mr. Rahul Verma Advocate
No. 13 with Mr. Gaurav Kandpal,
Advocate.

WITH

WRIT PETITION NO.208 of 2021 (PIL)

Anu Pant ...Petitioner

Versus

State of Uttarakhand and Others ...Respondents

Counsel for the petitioner : Mr. Abhijay Negi, Advocate.

Counsel for the State : Mr. Atul Sharma, Special
of Uttarakhand Counsel with Mr. Rajeev Singh
Bisht, Additional Chief
Standing Counsel with Mr.

Gajendra Tripathi, Standing Counsel.

**RESERVED ON :01.09.2023
DELIVERED ON:06.09.2023**

Upon hearing the learned counsel for the parties, this Court made the following judgment :

(Per : Shri Alok Kumar Verma, J.)

A Writ Petition (C) No.8729 of 2021 "Gaurav Kumar Bansal Versus National Tiger Conservation Authority" was filed before the Hon'ble High Court of Delhi. A Committee of National Tiger Conservation Authority (in short, "NTCA") was formed. The said Committee submitted its factual report based on field visit regarding illegal construction of bridges, buildings and water bodies by felling of trees between Pakhro Forest Rest House and Kalagarh Rest House in Corbett Tiger Reserve in the State of Uttarakhand and illegal felling of large number of trees in ongoing Pakhro Tiger Safari construction in Kalagarh Tiger Reserve Division. The Committee found that in order to allow illegal construction of roads and buildings in Corbett Tiger Reserve, Forest Officers had forged the Government records. The Committee recommended that all illegal construction in Morghati and Pakhro FRH campuses be demolished and eco-restoration work be undertaken with immediate effect and also the cost incurred for the same to be recovered from the concerned officers. The Committee opined that the Regional Office of the Ministry of Environment, Forest and Climate

Change (in short "MoEFCC") shall initiate action against the responsible officers as per the provisions of the Forest (Conservation) Act, 1980, the Wild Life (Protection) Act, 1972 and the Indian Forest Act, 1927. The MoEFCC vide its letter dated 12.08.2021, 17.09.2021 and 22.10.2021 directed the Chief Wildlife Warden of Uttarakhand to furnish a report on the complaints sent by Mr. Gaurav Kumar Bansal, Advocate regarding the illegal construction and illicit felling of trees at the locations in question within Corbett Tiger Reserve.

2. This Court has taken Suo-Motu cognizance of a news item, published on 23.10.2021 in "The Times of India" regarding the illegal construction activities being undertaken against the various forest laws in Corbett Tiger Reserve. The said matter has been registered as Suo-Motu Writ Petition (PIL) No.178 of 2021.

3. The Writ Petition (PIL) No.208 of 2021 has been filed inter alia praying for constitution of a Special Investigation Team to look into the allegations and to ensure a free, fair and transparent investigation.

4. Both these two petitions relate to a similar matter, therefore, these two petitions are being considered and decided by this common order.

5. The Suo-Motu Writ Petition (PIL) No.178 of 2021 will be treated as a leading case.

6. This Court issued directions in the Writ Petition (PIL) No.178 of 2021 on 27.10.2021 :-

"8. Meanwhile, the Principal Chief Conservator of Forest (General), Uttarakhand, the respondent no.5, the Principal Chief Conservator of Forest (Wildlife), Uttarakhand, the respondent no.6, and the Director of the Corbett National Park, Uttarakhand, the respondent no.8, are directed to inspect the site, and to submit a report with regard to the nature and extent of the illegal constructions being carried out, with regard to the persons, who are responsible for carrying out the said illegal constructions, and with regard to the concrete steps taken by the respondent nos.5, 6 and 8 against such persons, and against the illegal constructions."

7. In compliance to the said direction dated 27.10.2021, the Principal Chief Conservator of Forests (General), Uttarakhand, the Principal Chief Conservator of Forests (Wildlife) and the Director of the Corbett National Park, Uttarakhand made a site inspection on 30.10.2021. The team together visited Pakhro Tiger Safari and Pakhro FRH, Morghatti FRH, Kalagarh FRH in Kalagarh Tiger Reserve Division and Saneh Forest Rest House in Lansdowne Forest Division. On the basis of the site inspection, a report was submitted with these conclusion :-

"a. For constructions of buildings at Morghatti, there is no approval from the competent authority. It is in violation of

both Wild Life Protection Act, 1972 and Forest Conservation Act, 1980.

b. For entire construction works carried out at Pakhrau Tiger Safari, a detailed investigation is required to know the illegally felled trees in excess of 163 trees, which were approved for felling. Permission for only 163 trees has been accorded under the FC Act, 1980. No permission for construction in FRH premises has been granted under the approved plans. Investigation is also required to ascertain the extent of deviation from the approved plan for establishment of Tiger Safari and seek approval from the competent authority.

c. Regarding construction on the Kalagarh-Morghatti road, the facts have been provided in the NTCA's site inspection report that it is not a non-forestry activity. The strengthening of the road is very much a part of TCP. The only thing lacking is that DFO has not obtained any administrative or financial sanctions from the competent authority.

d. Construction of waterhole at Pakhrau, which is in the buffer zone is also not a non-forestry activity. TCP does allow creation of new waterholes as per requirements, but detailed guidelines have been provided for the same. No consultations have been done with the office of Field Director, CTR and CWLW for creation of this waterhole. It

also needs to be further examined that what flora has been disturbed at the site for creation of this waterhole."

8. As per the said report, all the illegal construction activities were carried out under the direction of the office of DFO, Kalagarh Tiger Reserve Division.

9. In response to the directions of MoEFCC dated 12.10.2021, the site of the Pakhro Safari area was also inspected by the DIG, Forest of Integrated Regional Office. His report dated 01.11.2021 discloses: -

"i. There is violation of condition of FC approval as more than 163 trees have been removed.

ii. Some more trees have been removed from the site of the water body, constructed near Pakhro FRH which is illegal and need further investigation.

iii. The constructions being carried out in four locations are permanent cement concrete structure being constructed over forest land by custodian of the said forest land i.e. DFO, Kalagarh Tiger Reserve Division.

iv. Majority of the structures are having identical layout plan with four rooms in one building with the each room having independent toilet facility.

v. Reception centre is being constructed in two of the four locations.

vi. The construction at four locations appears to be for the purpose of tourism which is a non-forestry activity.

vii. Extensive construction activity has been recorded during the inspection at four locations in the forest area for which no statutory/administrative/financial approval could be produced by the then DFO, Kalagarh Tiger Reserve Division who was present during inspection.

viii. The then DFO, Kalagarh Tiger Reserve has continued with the construction work at least a day before the inspection in spite of the directions to the contrary, from the Director, Corbett Tiger Reserve.

ix. The above action is against the provisions of IFA 1927, Forest (Conservation) Act, 1980 and Wildlife Protection Act, 1972.

x. Further, detailed investigation should be ordered by competent authority in the matter so that accountability could be fixed and legal action could be taken under the 3A/3B of the Forest (Conservation) Act, 1980, Indian Forest Act, 1927 and Wildlife Protection Act, 1972."

10. There cannot be any two opinions that the constitutional mandate is that the natural resources are the assets belong to the people of the country. It is the obligation of all concerned, including the Government, to conserve and not waste such valuable resources. State is a protector of public properties. State is the trustee of all the public properties and natural resources. State as a trustee is under a legal duty under Doctrine of Public Trust to protect these natural resources. This

Doctrine is found in a concept that certain common properties such as air, water, sea and the forests, are held by Government in trusteeship for the free use of general public.

11. In the case of **M.C. Mehta Vs. Kamal Nath and Others, (1997) 1 SCC 388**, the Hon'ble Supreme Court while considering the doctrine of public trust observed as under: -

"25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes...".

12. In the case of **Intellectuals Forum Vs. State of A.P., (2006) 3 SCC 549**, the Hon'ble Supreme Court observed, "The responsibility of the State to protect the environment is now a well accepted notion in all countries. "

13. In the case of **State of NCT of Delhi Vs. Sanjay, (2014) 9 SCC 772**, the Hon'ble Supreme Court has held that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment.

14. It is to be noted that as per the report of Forest Survey of India, the estimated total number of felled trees to be 6093. The Forest Survey of India has also estimated the species and diameter classes of such trees in its report.

15. The Committee of NTCA had filed its detailed site inspection report dated 22.10.2021 in Writ Petition No. 8729 of 2021. One of the recommendations for the State Government was to constitute a Vigilance Inquiry against the officers involved in the construction activities without any requisite approval. The State Government directed the Director, Vigilance Establishment to initiate an open enquiry against the concerned officers in the matter vide its letter dated 09.11.2021. The vigilance inquiry is still pending.

16. A five member Committee, led by Additional Principal Chief Conservator of Forests, was constituted by the Principal Chief Conservator of Forests (HoFF), Uttarakhand vide his letter dated 27.12.2021 to enquire into various aspects of the establishment of the Tiger Safari at Pakhro. The said Committee also came to the conclusion that several laws have been violated in this matter.

17. Considering the gravity of the matter, National Green Tribunal, Principal Bench, New Delhi has also taken this matter *suo motu* and registered as Original Application No. 748 of 2022, " In re: news item published in the Newspaper "The

Hindu” dated 02.10.2022, “Over 6,000 trees illegally cut for Tiger Safari Project in Corbett Reserve, says FSI report”.

18. The National Green Tribunal had directed to constitute a three member Committee comprising DG, Forest Department, ADG, Wildlife Department and ADG, Project Tiger to identify the violators and the steps required for restoration of environment.

19. A copy of the Central Empowered Committee’s report No. 3 of 2023 has been filed by Mr. Satyaprakash Singh, Deputy Secretary, Forest Department. The said report states: -

“63 (V). The principal culprit in the illegal construction of roads and buildings infrastructure is the then DFO Kalagarh with dubious past of committing similar irregularities has been hand-picked by the then Forest Minister to be posted to Kalagarh Forest Division and that too without a recommendation from the PCCF and Civil Services Board. This was done ignoring the advice of the State Vigilance department and the PCCF and HoFF not to post him in sensitive posts. It is therefore no surprise that massive legal and financial fraud has been committed within a short period of posting Mr. Kishan Chand to Kalagarh Forest Division.

(viii) Then Forest Minister was instrumental in the planning and execution of illegal and unauthorised roads and buildings within the Corbett Tiger Reserve and in the Lansdowne Division as is evident from his noting in

Government files and of him having supervised the illegal works executed by Shri Kishan Chand, the then DFO and the stand of the Forest Minister against initiation of disciplinary proceedings including the proposed suspension of the then DFO, pursuant to the report of NTCA."

20. The Central Empowered Committee has recommended the State Government to take action under the Indian Forest Act, 1927 and the Wild Life (Protection) Act, 1972 against all accused persons including the Government officials who perpetrated the crime.

21. As per report dated 24.02.2023 of the Committee, constituted by the National Green Tribunal, the construction works of administrative building, internal roads, service roads, Guard huts and Animal holding area were undertaken without any administrative and financial approval and without any budgetary provisions. There has been felling of trees more than the stipulated number of 163 in the approval for the Tiger Safari and works were started without Stage II approval under the Forest (Conservation) Act, 1980.

22. This said report dated 24.02.2023 States:-

"Violation of Forest Conservation Act, 1980: In gross violation of the provisions of Forest Conservation Act, 1980, the work in Pakhrau Tiger Safari started after laying of foundation stone in November, 2020 by then Forest Minister Shri Harak Singh Rawat without having received

any Stage II clearance under section 2 (ii) of Forest Conservation Act, 1980. Various administrative sanctions, financial sanctions and work orders were issued much before the Stage II approvals were issued by State Government. It is surprising to note that without any Stage II approvals in hand Government of Uttarakhand has released following sanctions on 31st March, 2021 for the FY 2020-2021 and then again August, 2021 thereby acknowledging that the work of that much amount has been done and the amount be booked before the close of FY:-

- (i) No.942/N-2-2021-12(43)2020 dated 31.03.2021 for Rs.258.57 lacs for Interpretation Center at Pakhrau.
- (ii) No.771/X-2-2021-12(06)2020 dated 31.03.2021 for Rs.143.57 lacs for Tiger Enclosure.

23. As per report dated 24.02.2023, Mr. Akhilesh Tiwari, DFO Kalagarh, Mr. Rahul, Conservator of Forests/Director, Mr. Jabar Singh Suhag, Chief Wildlife Warden and then Forest Minister have been found responsible for their illegal works. Apart from these provisions, Mr. Braj Vihari Sharma, Forest Range Officer/SDO, Mr. Kishan Chand, DFO, Mr. Sushant Patnaik, the then CCF, Garhwal, Mr. Mathura Singh Mavdi, Forest Range Officer and Mr. L.R. Nag, SDO have also been found responsible.

24. Mr. Abhijay Negi, learned counsel appearing for the petitioner, contended that even after the said enquiries and reports, no effective action has been taken by the Government against the culprit officers, who are the higher authorities of the Government and Forest Department. Therefore, looking at the magnitude of the matter as well as the seriousness involved in the present matter, this Court may consider the free, fair and transparent investigation from an independent Central Agency.

25. On the other hand, it is submitted on behalf of the State that the State has taken action in the present matter by suspending some officers and charge sheeting them while two officers, namely, Kishan Chand, the then Divisional Forest Officer, Kalagarh Tiger Reserve Division and Brij Vihari Sharma, the then Range Officer Sonanadi Range and Pakhru unit of Kalagarh Tiger Reserve Division have been arrested. Further, it has also been submitted on behalf of the State that there is no stay of the Hon'ble Supreme Court on the hearing of the present matter, but it would be appropriate to wait for the Vigilance Inquiry report before passing any order on these petitions.

26. In **Common Cause vs. Union of India, (2015) 6 SCC 332**, the Hon'ble Supreme Court observed, "What is of importance is that as justice must not only be done but it must also appear to have been done, similarly, investigations must not only be fair but must appear to have been conducted in a fair manner".

27. In view of the serious allegations against the higher authorities of the State, merely suspending some officers and keeping the matter pending by giving charge sheets to them does not come under the purview of concrete action in any way. The State Government, vide letter dated 09.11.2021, has instituted an open Vigilance Inquiry. But, the said Inquiry is still pending. In these circumstances, we cannot remain a mere bystander or spectator.

28. In **State of West Bengal and Others Versus Committee For Protection of Democratic Rights, West Bengal and Others, (2010) 3 SCC 571**, the Constitution Bench of the Hon'ble Supreme Court observed,

"69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-

imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya*, this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."

29. This Court, after considering the material on record, comes to the conclusion that the present matter falls within the principles enunciated by the Hon'ble Constitution Bench and we

are satisfied that the material on record does disclose a prima facie case calling for an investigation by the Central Bureau of Investigation.

30. Therefore, the present matter is referred to C.B.I. for proper and uninfluenced investigation in accordance with law.

31. A copy of this order be sent to the Director, C.B.I., New Delhi for compliance.

32. All the authorities in the State, if requested, are directed to cooperate with the C.B.I. in conducting fair investigation of the case.

33. We make it clear that we have not expressed any opinion on the merits of the allegations or make any comment on the contents of the enquiries and reports.

34. A copy of this order be placed on the record of Writ Petition (PIL) No.208 of 2021.

VIPIN SANGHI, C.J.

ALOK KUMAR VERMA, J.