



REVIEW ARTICLE

Felling of trees – The judicial trends

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Abstract

The Forest Conservation Act of 1980 was enacted with the intention of eradicating deforestation, which eventually leads to severe ecological imbalance; therefore, no matter who owns them or how they are classified, all forests must be subject to the provisions of the Act for the conservation of forests and matters related to them. The word “forest” must be understood according to its dictionary meaning. This definition applies to all forests recognised under the law, regardless of whether they are designated as reserved protected for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area, irrespective of ownership, that is designated as a forest in government records. For it to be applied in accordance with Section 2 of the Act, it must be interpreted in this manner. Irrespective of who owns the forest or how it is classified, all of the provisions made under the Forest Conservation Act of 1980 for the conservation of forests and items related thereto must be clearly applicable. Deforestation contributes to ecological imbalance and the degradation of the environment.

Keywords: Forest Conservation Act, Deforestation, Forest.

Introduction

The Forest Conservation Act of 1980 was enacted with the intention of eradicating deforestation, which eventually leads to severe ecological imbalance; therefore, no matter who owns them or how they are classified, all forests must be subject to the provisions of the act for the conservation of forests and matters related to them. The word “forest” must be understood according to its dictionary meaning. This definition applies to all forests recognized under the law, regardless of whether they are designated as reserved and protected for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will include “forest” as understood in the dictionary sense, and any area, irrespective of ownership, designated as a forest in government records. For it to be applied in accordance with Section 2 of the Act, it must be interpreted in this manner. Irrespective of who

owns the forest or how it is classified, all of the provisions made under the Forest Conservation Act of 1980 for the conservation of forests and items related thereto must be clearly applicable. Deforestation contributes to ecological imbalance and the degradation of the environment. There has been great concern about the large-scale deforestation that has been occurring in the country. This point has been clearly illustrated in the decision of the Apex Court in *Ambica Quarry Works case*.¹

*M.L. Sud's case*²

The facts in brief in this writ petition were that in the Master Plan of New Delhi, an area comprising about 435 acres of land near Greater Kailash Part II, known as Jahanpana Forest, was shown as “Green” and it was to be maintained as a city forest. The petitioners claimed that the Delhi Development Authority cleared the aforementioned forest by cutting down trees and building roads. According to the examination of facts and circumstances of the case, the Supreme Court decided as follows:

The Court did not propose to enter into the correctness of the aforesaid allegations because the Delhi Development Authority, through its counsel, gave an undertaking to this Court that no tree would be felled in the said area except in case of diseased trees and even before such a tree was felled, the Delhi Development Authority would take permission

1 *Ambica Quarry Works & Anr. v. State of Gujarat & Ors.*, AIR 1987 SC 1073

2 *M.L. Sud and Others v. Union of India and Others*, 1992 Supp. (2) SCC 123

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of the Head of the Horticulture Department of the Delhi Development Authority.

The Delhi Development Authority was directed to ensure that no vehicles were allowed to be used in the said area other than bicycles. These were to be permitted only by children below 12 years of age. If any constructions was put up in the said area by any private person, the Delhi Development Authority would take steps according to law to have the same demolished.

The Court laid down directions to the Conservator of Forests, Government of India to visit the area once every three months and to report any infringement of the directions made by the Court.

***Bombay Burmah Trading Corporation Ltd. Case*³**

Writ petitions were directed against some of the actions taken by the Government/Forest officials alleging that the petitioner-company was violating the terms of the lease and the conditions imposed by the government subsequently and that the company had resorted to indiscriminate felling of the trees and doing acts of endangering the ecology of the forest area and endangering life which require protection.

In the counter affidavit filed by the Government, it was contended that the estate having been taken over under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Act 26 of 1948), the Government had become the proprietor of the land and due notifications were issued under the Forest Act to constitute and to include the lands in the reserved forest area. Hence, it was necessary to strictly enforce and implement the provisions of both the 1972 Wildlife (Protection) Act and the Forest Act. The aforementioned provisions has been invoked in the public interest to safeguard the ecology of the forest and preserve endangered and rare animal and bird species. The petitioner had been indulging in indiscriminate felling of trees and carrying out activities that were detrimental to the forest ecology and endangering the animals and birds.

The Court observed

“Even otherwise, the directions and guidelines issued by the Supreme Court in *Godavarman's case*⁴ would apply to any forest irrespective of the ownership, especially in Tamil Nadu. That decision was rendered after the filing of these writ petitions. It was unknown whether the State Government had constituted the Committee to identify the areas/forest that required to be regulated and controlled. The Supreme Court had also stated that there would be a complete ban on the felling of forest trees in all the forest area.”

3 The Bombay Burmah Trading Corporation Ltd. v. The Deputy Director, Project Tiger, Mundanthurai and Another, 2003-I-L.W. 276

4 Godavarman Thirumulkpad v. Union of India & Ors., 1997 (2) SCC 267

***Godavarman's Case*⁵**

The issues were brought to light in the writ petition (C) No. 202 of 1995 filed by the locals of Nilgiris Forest in the Western Ghats. The petitioner sought to challenge the legality and the validity of the actions of the State of Tamil Nadu, the Collector, Nilgiris District and the District Forest Officer, Gudalur and the Timber Committee represented through the Collector, Nilgiris (Respondent No. 2–5, respectively), in destroying the tropical rain forest in the Gudalur and Nilgiri areas in violation of the Forest Act, 1927, Forest (Conservation) Act, 1980 and Tamil Nadu Hill Stations Preservation of Trees Act and the Environment (Protection) Act, 1986. According to the petitioner, this led to major ecological imbalances that had an impact on people's life and livelihoods in the state of Tamil Nadu.

In addition to criticizing the provisions of the Act, the petitioner argued that the people residing in these specific regions were being denied their fundamental right to live in a pollution-free and clean environment, which is enshrined in Article 21 of the Constitution of India. The petitioner also noted that preserving a clean, pollution-free environment requires preserving and conserving forests. It was further pointed out that the rain forests, which were only present in the southern portion of the Western Ghats, were home to several endangered plant and animal species and served as the primary water source for the rivers that emerged from the Ghats. The extensive deforestation in the Western Ghats caused the rivers to become dry, which had a negative impact on the people who relied on these rivers for their day-to-day water supply.⁶

Interlocutory Applications were submitted as part of this writ petition to request either general or specific guidelines or directions on a number of matters relating to safeguarding and preserving the environment. The subjects covered by interlocutory applications at different stages ranged from safeguarding the current forest cover to enhancing and conserving the forest cover; safeguarding lakes, rivers, and animals; and protection of flora and fauna and the ecological system of the country.⁷

The applications' hearings were scheduled for August 26, 2013, September 20, 2013, and October 4, 2013. After examining all the circumstances, on December 9, 2013 the Central Empowered Committee (CEC) was directed to provide its report on the applications and prayers made by the applicant. In response to the application the State of Gujarat put up, CEC submitted its report. In its report dated January 6, 2014, CEC recommended that the prayer made in

5 Godavarman Thirumulkpad v. Union of India & Ors., (2014) 3 MLJ 110 (SC)

6 Godavarman Thirumulkpad v. Union of India & Ors., (2014) 3 MLJ 110 (SC)

7 Godavarman Thirumulkpad v. Union of India & Ors., (2014) 3 MLJ 110 (SC)

the application ought to be accepted.⁸

This Court was continuously monitoring the enforcement of the protected measures directed to be taken by the various Central/State authorities on the basis of the recommendations made by the relevant expert bodies.⁹

In *Silver Cloud Estates v. (1) The Principal Chief Conservator of Forests, 259, Anna Salai, Teynampet, Chennai-600 006; (2) The District Forest Officer, Gudalur Division, Gudalur-643 212; (3) The Collector of Nilgiris, Ootacamund 643 001 and (4) The Superintendent of Police, Ootacamund-643 00, The Nilgiris*,¹⁰ the petitioner complains that even after repeated complaints by the petitioner to respondents 1, 2 and 4 against the illegal cutting of trees, affecting the ecological balance in the impugned area, they had not taken appropriate action, contemplated under Sections 40-V, 51 and 563 of the Tamil Nadu Forest Act, 1882 and Section 3 of the Tamil Nadu Preservation of Private Forests Act, 1949.

Admittedly, the petitioner was the owner of the property, commonly known as “Silver Cloud Estates”, in Upper Gudalur, at Nilgiris, notified as a Private Forest under the Tamil Nadu Forest Act, 1882 as well as the Tamil Nadu Preservation of Private Forests Act, 1949.¹¹

The counsel for the petitioner while placing the reliance on the Supreme Court’s ruling in *Godavarman’s case*¹² contended that respondents 1, 2 and 4 should not ignore their statutory duties, referred to above, and further contended that the first respondent should prepare an action plan for effective protection of the petitioner’s private forest.

The counsel for respondents 1, 2 and 4 brought to the Court’s notice, the undertaking given by the respondents to protect the private forests, which reads as under:

“The respondents and the staff of the Forest Department are keeping a close watch on these properties as it is necessary to protect the private forests and see that the commission of forest offences are avoided.”

The Court held

8 Godavarman Thirumulkpad v. Union of India & Ors., (2014) 3 MLJ 110 (SC)

9 Godavarman Thirumulkpad v. Union of India & Ors., (2014) 3 MLJ 110 (SC)

10 *Silver Cloud Estates v. (1) The Principal Chief Conservator of Forests, 259, Anna Salai, Teynampet, Chennai-600 006; (2) The District Forest Officer, Gudalur Division, Gudalur - 643 212; (3) The Collector of Nilgiris, Ootacamund - 643 001 and (4) The Superintendent of Police, Ootacamund - 643 00, The Nilgiris, 1999-2-L.W.477*

11 *Silver Cloud Estates v. (1) The Principal Chief Conservator of Forests, 259, Anna Salai, Teynampet, Chennai-600 006; (2) The District Forest Officer, Gudalur Division, Gudalur - 643 212; (3) The Collector of Nilgiris, Ootacamund - 643 001 and (4) The Superintendent of Police, Ootacamund - 643 00, The Nilgiris, 1999-2-L.W.477*

12 *Godavarman v. Union of India & Ors., State of J & K & Ors., AIR 1998 SC 769*

Taking into account the facts and circumstances of the case, the grievance of the petitioner and the relief sought for in the above writ petition, the statement of the respondents that they were keeping a close watch to protect the impugned private forest would not by itself be sufficient, unless they worked out an effective scientific action plan with an intensive patrolling, in order to prevent such illegal cutting of trees in any forest area, and to implement the same scrupulously.

In *Tata Tea Limited’s case*¹³, Writ Appeal arose from the order of the Single Judge, allowing the writ petition filed by the first respondent declaring that the first respondent need not obtain any permit, consent or licence from the State Government or any other authorities for felling/transporting or using fuel trees grown by them in their own estates, for the manufacture of tea or domestic use in connection with the tea industry.

The Madras High Court’s Division Bench relied upon the Judgment of the Supreme Court in *Godavarman*¹⁴ and held as follows:

The Supreme Court directed that the report of TANTEA must be strictly followed while cutting down fuel trees. The recommendation of the TANTEA report was not in much deviation from the provisions of the Tamil Nadu hill areas (Preservation of Trees) Act, 1955. In Court’s view, for cutting and removing trees as per the provisions of Tamil Nadu hill areas (Preservation of Trees) Act, 1955, permission in writing of the Committee was mandatory.

The Madras High Court ruled

The learned single Judge did not keep in view the benevolent object of the Act, which was intended to regulate the felling of trees and preventing soil erosion. The order of the learned single Judge declaring that no permission was required for cutting and removing trees was opposed to the provisions of the Act and to the direction of the Supreme Court in *Godavarman* (supra).¹⁵ While upholding the provisions of the Act, the learned single Judge ought not to have granted the declaration that no permission was required for felling of trees for utilising the same as fuel. The order of the learned single Judge dated 7.8.2000 made in W.P. No. 18047 of 1993 could not be sustained and the same was set aside.

In *S.Chakravarthi v. The District Collector, Thiruvallur and three others*,¹⁶ the petitioner sought for issuance of a writ of mandamus in the Madras High Court by way of Public Interest Litigation to direct (1) the District Collector,

13 *Tata Tea Limited v. The State Of Tamil Nadu, (2010) 8 MLJ 860*

14 *Godavarman Thirumulkpad v. Union of India & Ors., AIR 1997 SC 1228*

15 *Godavarman Thirumulkpad v. Union of India & Ors., AIR 1997 SC 1228*

16 *S.Chakravarthi v. The District Collector, Thiruvallur and three others, 2009-I-L.W.560*

Thiruvallur; (2) The Government of Tamil Nadu represented by the Secretary, Department of Forests, Fort St. George, Chennai-9; (3) The Tahsildar, Thiruttani Taluk, Thiruvallur District; and (4) Panchayat Development Officer, Thiruttani Taluk, Thiruvallur District not to fell the trees in the land in Survey No.77/3 of Mamandur Village, Thiruttani Taluk, Thiruvallur District in order to implement the Periyar Memorial Samathuvapuram Scheme on the said land or the other lands in Survey Nos. 77/8, 77/9, 77/10, 77/11 and 77/12 of the said village and district.

By citing the notification issued on May 15, 1991 in accordance with Section 6 of the Tamil Nadu Forests Act, 1881, the Government Pleader contended that though under the said notification, objections were called for to declare the above referred to lands under the category of "Odukku Kadugal", viz., Reserved Forests, the ultimate declaration under Section 16 of the above said Act was not issued that the above referred to lands continued to remain and be classified as ordinary Government lands. The Government Pleader further contended that inasmuch as the above referred to lands could not be construed as forest lands falling under the provisions of the Tamil Nadu Forest Act, 1881, the question of invoking Section 2 (ii) of the Forest (Conservation) Act, 1980 did not arise and consequently, the approval of the Central Government was not required to create a Samathuvapuram in the said lands.¹⁷

The Division Bench of the Madras High Court relied upon a Judgment of the Apex Court in *Monitoring Committee v. Mussoorie Dehradun Development Authority and others*¹⁸ wherein, the Supreme Court stated as to what land could be construed as forest land. In the words of the Supreme Court as stated in paragraph 1 of the said Judgment, the term "forest land" could be construed in the following manner:

"The term 'forest land' had not been defined under the Indian Forest Act, 1927 or the 1980 Act and therefore, had to be understood as including an extensive track of land covered with trees and undergrowth, sometimes intermingled with pasture, i.e., it would have to be understood in the broad dictionary sense. So understood, any area which the State Act considered to be a forest and was governed under that law would also be subject to Section 2 (ii) of the 1980 Act. Viewed in this light, any land which the State of Uttar Pradesh by notification declared to be a forest would be governed under Section 2 (ii) of the 1980 Act."¹⁹

The Bench observed

"When the Court applied the principles set out in the above said decision of the Supreme Court to the case on hand, the Court found that as early as in the year 1991, when the State

Government issued the notification dated 15.9.1991, there were an indication to the effect that there was extensive growth of trees and other plantations in the above referred to lands and that the State Government itself intended to declare the said lands as forest lands in the light of such extensive growth of trees and plantations. Though the further declaration under Section 16 of the Tamil Nadu Forest Act, 1881, did not ultimately fructify, the fact that the land had extensive growth and plantations having been accepted by the Department of Forest themselves, it would be too late in the day for the respondents to contend that the said lands were mere Government lands and therefore, there was nothing for seeking the permission of the Central Government as prescribed under Section 2 (ii) of the Forest (Conservation) Act, 1980. When the Court applied the ratio laid down by the Supreme Court in the above referred to judgment to the present case, the Court had no hesitation in holding that the land in question, which had extensive growth of trees and plantations, squarely came under the definition of 'forest land' and consequently attracted the stipulations contained in Section 2(ii) of the 1980 Act."

The Bench further observed

As far as the move of the State Government for construction of houses under the Periyar Memorial Samathuvapuram Scheme was concerned, here again, the Court wished to be guided by what had been stated by the Supreme Court in the very same judgment, wherein in paragraph 2, while considering the question of building could be construed as non-forest activity, the Supreme Court ruled as under:

"... Any building activity permitted within the forest area would certainly be a non-forest activity which required the prior approval of the Central Government..."

The Bench ruled

Therefore, the present attempt of the State Government in putting up certain constructions, though for the purpose of creating a Samathuvapuram, would nonetheless be a non-forest activity and, consequently, compliance of Section 2 (ii) of the Forest (Conservation) Act, 1980 would become imperative.

The Bench held that the respondents, in particular the District Collector, Thiruvallur District/first respondent was bound to abide by the legal requirements set forth in Section 2 (ii) of the Forest (Conservation) Act, 1980, and the authorities/respondents were not permitted to begin any construction on the lands located in Survey No. 77/3 of Mamandur Village, Thiruttani Taluk, Thiruvallur District or the other land in Survey Nos. 77/8, 77/9, 77/10, 77/11 and 77/12 of the said village and district without obtaining prior permission from the Central Government.

The Bench gave liberty to the authorities/respondents to approach the Central Government and sought for appropriate permission if they still wished to pursue with

17 S.Chakravarthi v. The District Collector, Thiruvallur and three others, 2009-I-L.W.560

18 Monitoring Committee v. Mussoorie Dehradun Development Authority and others, (1997) 11 SCC 605

19 Monitoring Committee v. Mussoorie Dehradun Development Authority and others, (1997) 11 SCC 605

their scheme of construction of a *Samuthuvapuram* in the lands in the above referred to survey numbers.

In *Tamilaga Girama Vivasayigal Sangam, Coimbatore District represented by its Secretary v. Chairman, National Highways Authority of India, New Delhi and others*,²⁰ writ petition was filed by the Tamilaga Girama Vivasayigal Sangam, Pongalur Union in public interest seeking to challenge the action of the authorities/respondents from carrying on the project of expanding the road on the National Highway No.67 between the stretch of Karur and Coimbatore without cutting the trees on either side.

The Bench observed

A detailed sketch map, including the plan showing the change of alignment to avoid cutting trees, was filed by the Assistant Solicitor General for the authorities/respondents. He also suggested that while felling some other trees were inevitable, the highway authorities were also concerned about the ecological impact of tree felling and that they were willing to re-plant more trees than what had been felled down. In the counter affidavit dated 28.11.2006, it was stated that saplings would be planted at the rate of 1:3 ratio, but however, informed the Court that they were willing to abide by any direction issued by the Court to plant more saplings, including slightly grown-up trees.

The Bench ruled

In light of the stand taken by Highways authorities/respondents 1 and 2, the Court directed respondents 1 and 2 to abide by the plan and the drawing filed before the Court on 6.2.2007 with reference to the retention of the trees. The Court further directed that respondents 1 and 2 would plant saplings at the rate of ten saplings per one tree. But the saplings must be the slightly grown-up varieties and also maintain the same for a sufficient period so that they were not destroyed by vandalism or being eaten by the straying cattle.

In *Animal and Environment Legal Defence Fund v. Union of India and others*,²¹ the Apex Court held that the National Park could be endangered by fishing since it could result in poaching or the illegal cutting down of trees. It is practically impossible to keep track of 305 licensees, their entrances and exits, and to make sure that they are not engaging in poaching or other environmentally destructive practices. In addition, this will have an effect on migratory and aquatic birds that relied on small islands and dead or dying trees in the reservoir for nesting and breeding.

In Godavarman's Case,²² The Supreme Court Inter Alia Directed

Unless as specified in the State Governments' Working Plans as approved by the Central Government, tree-felling was to remain suspended in all forests. In a state where the permit system was in place but there was no working plan, such as Arunachal Pradesh, the felling of trees can only be done by the State Forest Corporation or the Forest Department of the State Government;

The transportation of cut trees and timber by rail, road, or waterways from any of the seven North-Eastern States to any other State in the union should be completely prohibited. The State Governments and the Indian Railways were directed to take all necessary measures to ensure that this instruction was diligently followed.

Conclusion

It is to be understood that not just mature trees are subject to cutting and removal. The entire forest areas are being removed by uncontrolled tree cutting as a result of the companies' desire to make enormous profits. The 1952 national policy called for forest preservation, conservation and safeguarding. The existence of huge forest covers is acknowledged as a priceless component of the national heritage. Forests, especially natural forests, must be protected from exploitation since they cannot be restored to their original state once destroyed. Destroying rainforests would negatively impact the environment, the ecosystem, and all the organisms that reside there. This would lead to such destruction, which would ultimately have an enormous impact on the ecosystem and the standard of living for those who live in and around forests.²³

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- 23 Godavarman Thirumulkpad v. Union of India & Ors., (2014) 3 MLJ 110 (SC)

²⁰ Tamilaga Girama Vivasayigal Sangam, Coimbatore District represented by its Secretary v. Chairman, National Highways Authority of India, New Delhi and others, (2007) 7 MLJ 576

²¹ Animal and Environment Legal Defence Fund v. Union of India and others, (1997) 3 SCC 549

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