

## JUDICIAL APPROACH-FOREST PROTECTION

Judiciary has to deal with cases involving conflict between the need to preserve the forest and the need for developmental activities.

STATE OF BIHAR  
V.  
BANSHI RAM MODI  
(AIR 1985 SC 814)

Banshi Ram modi had obtained a mining lease to carry out mining operations in Hazaribagh area Bihar. While operating within area granted he discovered two other minerals. As required by mining rules, he applied to the government to include the said minerals also in his mining lease and this was allowed. The question before the supreme court was as to the legality of allowing additional mining minerals within the Reserved Forest area. The SC ascertained the objects, reasons of the Forest Conservation Act 1980 and concluded that: "the act was passed with a view to check deforestation which had been taking place in the country on a large scale and which had caused ecological imbalance and thus led to environmental deterioration. It is well known that breaking up of the soil or clearing the forest land affects seriously reforestation and regeneration of forest and therefore breaking up of the soil can only be permitted after taking into consideration all aspects of the questions such as the overall advantages and disadvantages to the economy of the country, environmental conditions, ecological imbalance that is likely to occur its effects on the flora and fauna in the area etc...The act applies not merely to cases of mining lease granted in respect of areas within the reserved forest but to all cases where forest land is sought to be used for non forest purposes"

BANVASI SEVA ASHRAM  
V.  
STATE OF UP  
(AIR 1987 SC 374)

Conflicting claims of adivasis and retaining the reserved forest free from their encroachment was decided in the case arising from the Mirzapur district of UP.

Adivasis and other Backward People living within the jungle used the forest area, which the authorities resisted. Criminal cases of forest offences were filled and eviction proceedings were commenced. The matter went before the SC in the form of public interest litigation. When the matter was pending before the SC, the government decided to establish the Thermal Power Plant within a part of the disputed area. The claim of government for developmental activity intervened the consideration of the rights of Adivasis. The court issued various directions in an attempt to retain forest and also to allow Adivasis to put forward their claims and also to allow government to implement of its project of Thermal Plant. The following observations of the SC is worthy of note:

"indisputable forest are much wanted national asset. On account of depletion thereof, ecology has been disturbed; climate has undergone a major change and rains hav become scanty. These have long term adverse effect on national economy as also on living process. At the same time we cannot loose the site of the fact that for industrial growth as also for provision of improved living facilities there is a great demand for energy such as electricity. A scheme to generate electricity, therefore, equally, of national importance and cannot be deferred".

STATE OF HP

V.  
GANESH WOOD PRODUCTS  
((1995) 6 SCC 363 at page 389)

A requirement of wood based industry was considered as against need to preserve trees. Katha which is an ingredient in pan and pan-masala is derived from the central portion of khair trees. The state had to allow the growth of industries, without sacrificing the forest wealth. In this situation the SC directed the proper estimate of availability of raw materials in the state and until then stopped the setting up of industry. The court made following observations which are of importance:

“the obligation of sustainable development requires that a proper assessment should be made of the forest wealth and establishment of industries on the forest based produce should not only be restricted accordingly but their working should also be monitored closely to ensure that the requires balance is not disturbed. Insofar as forest based industries are concerned, there is no absolute or unrestricted right to establish the industries. No distinction can be made between government forest and private forest in the matter of forest wealth of the nation and in the matter of environment and ecology.

T.N. GODAVARMAN THIRUMULKPAD  
V.  
UNION OF INDIA  
(AIR 1997 SC 1228, AIR 1998 SC 769)

Here the question was about preservation, conservation and protection of forest. The SC explained that the forest conservation act 1980, should apply to all forest irrespective of the nature of ownership or classification thereof. The word forest must be understood according to the dictionary meaning. This description covers all the statutory recognised forest as reserved forest, protected or otherwise. The court laid down following directions:

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government.
2. In the tropical wet ever- green forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and ply- wood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 Kms. from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.
3. The felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any Working Plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.
4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or

water-ways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purpose. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an Expert Committee to:
  - (i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;
  - (ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and
  - (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.
- 6 Each State Government should within two months, file a report regarding:-
  - (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
  - (ii) the licensed and actual capacity of these mills for stock and sawing;
  - (iii) their proximity to the nearest forest;
  - (iv) their source of timber.
- 7 Each State Government should constitute within one month, an Expert Committee to assess :
  - (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
  - (ii) the number of existing saw mills which can safely be sustained in the State;
  - (iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.
- 8 The Expert Committees so constituted should be requested to give its report within one month of being constituted.
- 9 Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports.

TATA ENGINEERING AND LOCOMOTIVE CO LTD

V.

STATE OF BIHAR

((2000) 5 SCC 346)

The SC rejected the plea of mighty TELCO when it argued that for its sawmills, which it setup for providing wooden items required in the manufacture of trucks etc. Licence was not required to be obtained under the provisions of Bihar saw Mills Regulation Act of 1990. In the course of the judgement the court emphasized thus:

“this court has on more than one occasion proclaimed the need for strict regulation of wood-based industries after identifying the proliferation of such industries to constitute the main cause of degradation of forest resulting in a serious threat to ecology and environment protection.”

It was the contention of the TELCO that the saw mills established by them was incidental to their industry; unless the mill was established in the course of trade in timber, the obligation to obtain licence will not arise. The court did not accept this. It gave the following reason:

“Being a bulk consumer of huge quantity of wood/timber, utilizing them by carrying on sawing activities in their sawmill though located in their premises driven with electrical and mechanical power, it is but necessary that the appellant company should obtain a licence under that act so that the authorities of forest department can effectively keep track of their purchases and utilization and thereby ensure that their activities do not in any manner help or encourage even indirectly those engaged in illicit felling of trees in disposing of such ill-gotten timber/wood.”

So the court emphasized the need to preserve the forest as against the need of industry.

THE GOA FOUNDATION AND ANR

V.

THE CONSERVATOR OF FOREST, FOREST DEPARTMENT, PANAJI GOA & ORS.  
(AIR 1999 Bombay 177)

A public interest litigation was filed by the Goa foundation challenging the permission granted by the Conservator of Forests contrary to the Forest (Conservation) Act 1980 for carrying out certain developmental activities in the forest area of village Penha de Frana of Barteiz Taluka of Goa. According to the petitioner, the land in question was a forest land and non forest activity therein was not permissible unless prior permission was taken from the Central Government under the Forest Conservation Act 1980. The petitioner alleged that alterations were made in the survey record for facilitating the residential complex work in the area of 11.275 sq metres. The Court looked into the rival contentions made by the Forest Department by scrutinizing the past record of the land. It also verified the Forest Department instructions for application of Forest (Conservation) Act 1980 to private forest. Tracing the history of the said land the court observed that the construction activity in these areas was for a non-forest purpose and as no approval had been taken from the Central Government in this regard the developmental activity carried out in the area had to be stopped.

GOLDEN GRANITES

V.

K.V. SHANMUGAM (AIR 1998 Madras 150)

The Madras High Court did not permit the quarrying of black granite in a portion of the forest situated in Dharmapuri District in Tamilnadu. Under the Forest Conservation Act, prior permission was not obtained in that case, though the State, while granting the mining lease, stipulated that actual quarrying should be started after obtaining the permission of the Central Government. According to the High Court, the concept of prior approval under that Act meant that the State Government should have obtained the approval of the Central Government even before granting the quarrying lease. Therefore, the High Court nullified the mining lease that was granted.

