

# A Tale of Forest Conservation From Nature Lovers Movement Case

Arup Poddar<sup>#</sup>

<sup>#</sup>Professor of Law, The WB National University of Juridical Sciences, Kolkata, India

---

**Abstract:** *Forest conservation was not a serious consideration in India prior to 1980 and the state government was at liberty to convert the forest land for nonforest purposes and for that purpose no prior approval from the central government was required. Because of this reason the forest coverage was shrinking considerably and to check the depletion of forest resources a law to conserve forest was enacted in the name of Forest (Conservation) Act, 1980. However, dispute continued with those cases where immediately before the commencement of 1980, permission was granted, the question came up whether that permission would be valid because the state government had not taken any prior approval from the central government. Similarly, the forest land which were encroached by the public for residential purposes either before the commencement of this Act or after the commencement of this law, which is also one of the examples of nonforest use of forest land, whether the state government can evacuate the encroacher and provide proper rehabilitation of the mass of people those were considered to be encroacher of forest land. The present article aims to provide solution to these circumstances while properly interpreting the scope of the law dealing with forest conservation.*

**Keywords:** Forest land, Non-forest purpose, Mining, Forest conservation

## 1. Introduction

It is true that the Forest (Conservation) Act, 1980<sup>1</sup> came into operation for the purpose of checking further deforestation in India. Under this statute, it is the state government, who will have to take prior approval from the central government to convert the forest land for nonforest purposes including leasing out forest or any part thereof in the hand of private individual or corporation, provided, such forest land is not owned, control and managed by government. But, when the matter is connected with socio-human issue, for example, public at large have encroached forest land for residential purposes for a long period of time, and after the commencement of this statute on forest conservation the concerned state government wishes to regularise such de-reservation, whether the state government

needs prior approval from the central government or not, is the primary issue to understand the scope of forest conservation in India. The present nature lovers case is associated with this kind of problem about encroachment of forest land by general public for a long period of time in the state of Kerala.

## 2. Fact Of The Case

Because of excessive growth of population, in the state of Kerala, many people started encroaching forest land in different districts for residential purposes. It started for long time, before 1977, and for which state government of Kerala was aware of the fact that there is encroachment of forest land for nonforest purposes. However, the state government paid attention to these encroachers only after the commencement of statute on forest conservation in the year 1980. This is because, the forest conservation law requires under its provisions that for converting forest land for nonforest purposes by the state government, prior approval of the central government is essential. Accordingly, people encroaching forest land for residential purposes is not the forest use of land, therefore, under this enactment the state government will have to take approval from the central government to convert the land for residential purposes of the people who have encroached the forest land for a long period of time. After the forest conservation enactment, the state government of Kerala, started giving title deeds to those encroachers of forest land who did occupy the forest land before the year 1977. However, transferring title deed to the people who encroached the forest land after 1977, no such title deed was given by the state government and they were requested to evacuate the forest land. The state government also clarified one of the questions raised by the petitioner that the people who have encroached the forest land even before 1977, they should have been rehabilitated to a different suitable location, while saying that such a big mass of people to rehabilitate to another suitable location is absolutely unworkable. Therefore, the state government did not ask for the approval of the central government regarding dereservation of the forest land for those people who occupied the forest land as encroacher after 1977 till the operation of the

forest conservation law. However, the state government of Kerala requested for approval of the central government only for those people, which is also larger number, those who are encroaching the forest land before the year 1977. The central government, while applying the provisions of section 2<sup>2</sup> of the forest conservation law, permitted the state government of Kerala to transfer such forest lands for nonforest purposes, which means that the people who have encroached the forest land shall be lawfully entitled to have title deeds over such piece of nonforest land. In this regard, to understand, why the regularisation of forest land for nonforest purposes was permitted by the central government before 1977, is to be analysed further.

### 3. Impact Of 42<sup>nd</sup> Amendment To Indian Constitution

The year 1977 was the cut-off date to regularise the forest lands which were encroached by the families for residential purposes in the state of Kerala, had been influenced by the 42<sup>nd</sup> Amendment to Indian Constitution, which took place in the year 1976<sup>3</sup>. In this amendment, not only many provisions were changed under the Indian Constitution, but also new provisions were inserted within the constitutional parameters, in particular for environmental protection, such as, Article 48 A<sup>4</sup> and Article 51 A (g)<sup>5</sup>.

Article 48 A of the Indian Constitution clearly mandates a specific function for the purpose of protecting and improving the environment. According to this article, the state shall perform its duties not only for the purpose of protecting the environment, such as, forest, wildlife, river water, territorial water, land properties, mountain ecosystem, et cetera, but also shall improve the condition of the environment which would be ideal for full enjoyment of life of the people. Improvement of the environment, further means that, wherever different components of the environment, such as, atmosphere, water, land, forest, wildlife, et cetera are suffering degradation because of anthropocentric activities, such as, urbanisation, industrialisation, construction of bridge over River for national highways and railway lines, unsustainable development, et cetera, the state shall take appropriate measures and steps, first, to stop the degradation of the environment and its components and second, restoring the damaged environment. Therefore, from the above reading it is clear that protection, means securing or caring different components of the environment in its existing sound condition. At the same time, the expression improvement means, that the degradation already appeared in different components of the environment because of human activity, that should be minimised by the state action and take measures to rectify such

degradation, in other words, take steps for restoring the damage environment. Accordingly, the obligation mentioned under Article 48 A is enormous to the State and will have to continuously prepare the development of environment management plan by the state, so that not only protection to the environment can be ensured, but also degradation of the environment can be taken care of while promoting restoration of the damaged environment because of anthropocentric activities.

Finally, Article 48 A, gives a special status to two basic components of environment, for example, forest and wildlife. Now the question is, why these two components have been specifically mentioned under this article. My argument would be that, in any country forest coverage should be maximum, because forest acts as a purifier of the atmosphere. Now, because of climate change Convention<sup>6</sup>, weightage has been given to the reforestation and afforestation<sup>7</sup>. Protection to forest coverage is essential, because of the fact that, the greenhouse gases<sup>8</sup>, which are responsible for enhancement of global mean temperature<sup>9</sup>, somewhere these gases to be absorbed. The deep dense forest acts as a sinkhole<sup>10</sup> for the greenhouse gases. Therefore, maximum the coverage of forest, maximum the absorption of greenhouse gases and thereby the global mean temperature is controlled significantly and which can prevent the climate change or climatic variations based on temperature, which further means control of global warming. At the same time, forest acts as habitat for wild animals. In order to protect various species of wild life, the state will have to protect forest resources, which is considered to be the ideal habitat for wild animals. Accordingly, Article 48 A gives special attention to forest, to be protected by the state action. The Article 48A, also gives special mention of wildlife. This is because, to maintain a holistic environment, where special care has been taken to endangered species or rare species, and also for the purpose of appropriately maintaining the eco-cycle or food chain, the expression 'wild life' has been mentioned not only for the purpose of protection but also for the improvement of habitat of wild animals.

Article 51 A (g) of the Indian Constitution clearly recognises the fundamental duties of citizens of India for the purpose of not only protecting the natural environment including forests, lakes, rivers and wild life, but also to improve the condition of these environmental resources to a sound environmental condition. This article also emphasises to citizens that they should have compassion to living creatures. To show kindness towards living creatures, is not limited to wild animals only, but also applicable to those animals which are found in urban areas. For example, a bad treatment to stray dogs, or cows and bulls who are roaming on the streets of urban cities, shall be a violation under this article. This article also

promotes that there is no conflict between man and animal. However, the most debatable area is that whether slaughterhouses would become against the principle of having compassion to living creatures as mentioned under this article of the Indian Constitution. It is important to note here that this article encourages that not to kill animals to meet with the human needs. In this regard, it is interesting to note here that the Wild life (Protection) Act, 1972, empowers the Chief Wildlife Warden to issue notices for killing of wild animals if those animals are suffering with the diseases or disability beyond recovery<sup>11</sup>. At the same time, Wildlife Warden, can allow killing or hunting of animal for educational and scientific research purposes<sup>12</sup>. Therefore, killing of wild animals, who have become dangerous for human life, for example, elephant, Tiger, cheetah, et cetera, seems to be valid and are not contrary to Article 51 A (g) of Indian Constitution.

In the nature lovers case, the honourable Supreme Court has taken reference of these two above-mentioned articles of Indian Constitution to depict the responsibilities as available to state and to citizens as well.

The legal issue with regard to conversion of Forest land for nonforest purposes was further debated before the apex court by the petitioner and number of cases were cited to examine the situation that with the dereservation of the forest could be done after the commencement of the forest conservation law of 1980.

#### **4.Importance Of Banshi Ram<sup>13</sup> Case**

The question is if, before the commencement of the forest conservation law, the forest land has already broken into nonforest purposes, for example, mining and the mining lease was granted for 10 years. At the time of renewal of lease the forest conservation law comes into operation. Whether renewal of licenses should be granted or not. In this case, the honourable Supreme Court clarified that since, the forest land is already broken into nonforest land, therefore, renewal of licenses for mining will not go against the provisions of the forest conservation law. Moreover, the apex court stated that when the company applied for renewal, if they have found several minerals and collected the same for transportation on the same piece of land, then not allowing the approval of the lease for mining shall jeopardise the rights of the company who had taken the lease before the commencement of the forest conservation law, thereby, the forest land was considered to be nonforest land, accordingly, such forest land broken into nonforest purposes. It is important to note here that, after the commencement of the forest conservation law of 1980, there is no such provision which reverses the nonforest land once declared

earlier by the state government to be considered forest land. Therefore, to apply the provisions of the forest conservation law of 1980 the concerned land must be of forest land and if such land is nonforest land, section 2 of the forest conservation law shall not be applicable. Though, in this case the honourable Supreme Court validated the approval of the renewal of licenses, however, in the subsequent case the apex court took different stand.

#### **5.Importance Of Ambika Quarry<sup>14</sup> Case**

In this case the petitioner was given the mining lease for 10 years right from 1971, therefore, the mining lease ended in the year 1981 and whereas the forest conservation law of 1980, commenced from 1980 itself. At the time of applying renewal of licenses for mining, the government of Gujarat declined to approve the renewal of mining licence on the ground that the forest land which will be subject to renewal for mining or for quarrying purposes is, now, a part of reserved forest. The situation is different from the earlier Banshi Ram case, as in that case the forest land was already broken into nonforest purposes. The High Court of Gujarat upheld the decision of the state of Gujarat regarding the declining to provide renewal of quarrying purposes. When the matter that appeared before the honourable Supreme Court, the court clarified the position that if the forest land is not broken into nonforest purposes with the state government notification, then after the commencement of the forest conservation law in the year 1980 such land shall remain as forest land, even if earlier lease was granted for nonforest purposes, and provisions of section 2 of the forest conservation law shall be aptly applicable to such forest land and accordingly, granting the renewal of licenses for mining, will require prior approval of the central government and once approval has been granted then only state government can renew such mining on quarrying licenses. In this case, to counter the findings of Banshi Ram case, the honourable Supreme Court had taken the reference from one UK case<sup>15</sup>, stating that when the situations are different regarding granting the renewal of licenses, then conclusion also would be different. In the other words, the Supreme Court stated that the cases decided for a particular situation "becomes an authority" only and not the logic follows from it. The apex court clarified the situation that once the forest has been declared as reserved forest, becomes a part of forest as mentioned under section 2 of the forest conservation law<sup>16</sup>. The purpose of enacting forest conservation law in the year 1980 was basically to check further deforestation in India. Therefore, purpose of the forest conservation law is not only to conserve the forest and forest land but also to prevent further

depletion of forest resources by not promoting forest land for nonforest purposes<sup>17</sup>.

## 6. Ambit Of Forest Land

What should be the specific answer to this question that within the expression "forest land" what sort of forest land shall be included and whether that will depend on ownership. In order to answer this question, the honourable Supreme Court has clarified that the expression 'forest land' as mentioned under this forest conservation law not only includes the forest land as controlled and regulated by the state agencies, but also all types of forest land shall come within the purview of this expression irrespective of ownership, provided, the record of such forest land is registered with the government<sup>18</sup>. This finding has again been asserted by the honourable Supreme Court in the 1996<sup>19</sup> and stated that in India forest land shall come within the legal purview of section 2 of the forest conservation law of 1980, therefore, ownership does not matter. Therefore, temporary ownership granted to some mining industries for mining the forest land shall not change the status of forest land as described within the purview of section 2 of the forest conservation law. Any action initiated by such owner which is against the provisions of the forest conservation law, the government will have all power to ensure that the provisions of this legislation is duly observed.

## 7. Decision Of The Court

Finally, the apex court approved the decision of the state government of Kerala, on the ground that since, central government has approved the dereservation of forest land for the purpose of residence of the people who have encroached the forest land before 1977. However, this relief shall not be applicable to the people who encroached the forest land after the year 1977. The court made it a point that under the concept of 'sustainable development' there must be a harmony between development and preservation of environment and it has been found that sometimes, few portions of the forest land is converted into agricultural land by the persons who are residing outside the forest areas. In the nature lovers case, the Supreme Court made a point that the people who have encroached the forest land prior to 1977 shall bear the cost for compulsory afforestation scheme and such cost shall be recovered by applying polluter pays principle. Moreover, the apex court clarified that the Forest (Conservation) Act, 1980 has no retrospective effect, because of the fact that section 2 of this Act mentions 'prior approval' of the central government and as per this interpretation this section cannot be applied retrospectively.

## 8. Conclusion

Forest conservation law has been enacted by the union Parliament to check not only the present deforestation, but also to protect the forest and forest land for the purpose of securing the rights of the future generation. Prior to 1980, it is the state government who could decide to de reserve the forest and there was no role to be played by the central government. Accordingly, the forest coverage was shrinking significantly and to check such deforestation, the Forest (Conservation) Act, 1980 came into operation. However, forest land occupied by the people for residential purposes before 1977 was regularised by the state government of Kerala with a proper justification that relocation or rehabilitation of the mass of people to new suitable land is really unworkable in the state concerned. However, the people who occupied the forest land after 1977 and till 1980, that is, before the operation of forest conservation law, those people had no remedy, provided by the state of Kerala and they had to evacuate the forest land after the operation of forest conservation law. In the above discussion, many cases have been referred before the honourable Supreme Court to show the evidences that after the commencement of the forest conservation law, no state government can regularised the de-reservation of forest. But, the apex court clarified the position that when the mass of people cannot be rehabilitated and which is unworkable and where the state government has decided that till particular year the regularisation of dereservation of forest shall be applicable and central government has given its consent to that effect, then there cannot be any ground on which such decision can be challenged. The interesting part of the judgement is connected with application of polluter pays principle by which the people who have encroached the forest land prior to 1977 shall bear the cost for compulsory afforestation. Therefore, it was a kind of strategy, fixed by the court to restore the damaged environment, in particular forest land. In the other words, this compulsory afforestation scheme is the best example of replenishing natural resources. Overall, the apex court has asserted that forest conservation law has no retrospective but prospective application with regard to check and balance on deforestation.

---

1 Hereinafter statute forest conservation law

2 Section 2, Forest (Conservation) Act, 1980- Restriction on the dereservation of forests or use of forest land for non-forest purpose. Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing- (i) that any reserved forest (within the meaning of the expression "reserved forest" in any

law for the time being in force in that State) or any portion thereof, shall cease to be reserved; (ii) that any forest land or any portion thereof may be used for any non-forest purpose; (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government; (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation. Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants; (b) any purpose other than reafforestation; but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

3 for further details, please visit-  
<http://indiacode.nic.in/coiweb/amend/amend42.htm>

4 "48A. Protection and improvement of environment and safeguarding of forests and wild life.-The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

5 51A. Fundamental duties.-It shall be the duty of every citizen of India--- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

6 The Convention on Climate Change sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. It recognizes that the climate system is a shared resource whose stability can be affected by industrial and other emissions of carbon dioxide and other greenhouse gases. Available at [http://unfccc.int/essential\\_background/convention/items/2627.php](http://unfccc.int/essential_background/convention/items/2627.php) (last visited on 18.03.2017)

7 Afforestation and reforestation both refer to establishment of trees on non-treed land. Reforestation refers to establishment of forest on land that had recent tree cover, whereas afforestation refers to land that has been without forest for much longer. A variety of definitions differentiate between these two processes. Some definitions of afforestation are based on phrases such as "has not supported forest in historical time;" others refer to a specific period of years and some make reference to other processes, such as "under current climate conditions." The IPCC Guidelines define afforestation as the "planting of new forests on lands

which, historically, have not contained forests." Available at

[http://www.ipcc.ch/ipccreports/sres/land\\_use/index.php?idp=47](http://www.ipcc.ch/ipccreports/sres/land_use/index.php?idp=47) (last visited on 18.03.2017)

8 Carbon dioxide, methane, nitrous oxide, fluorinated gases. Available at <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> (last visited on 18.03.2017)

9 The 10 warmest years in the 136-year record all have occurred since 2000, with the exception of 1998. The year 2016 ranks as the warmest on record. Available at <https://climate.nasa.gov/vital-signs/global-temperature/> (last visited on 18.03.2017)

10 A carbon sink is anything that absorbs more carbon than it releases as carbon dioxide. European forests are currently a net carbon sink as they take in more carbon than they emit. Available at <http://www.fern.org/campaign/forests-and-climate/what-are-carbon-sinks> (last visited on 18.03.2017)

11 See, Section 11 of the Wild life (Protection) Act, 1972

12 See, Section 12 of the Wild life (Protection) Act, 1972

13 State of Bihar Vs. Banshi Ram Modi AIR 1985 SC 814

14 Ambica Quarry Works v. State of Gujarat AIR 1986 SC 1620

15 For further details, please visit-opinion made by Lord Halsbury in Quinn v. Leathern [1901] UKHL 2

16 See for further details-Tarun Bharat Sangh, Alwar v. Union of India 1993 Supp (3) SCC 115

17 See for further details-State of A.P. and Ors. v. Anupama Minerals [1995]1SCR8; See also T.N. Godavarman Thirumulkpad v. Union of India AIR1997SC1228

18 See-Rural Litigation and Entitlement Kendra v. State of U.P AIR 1989 SC 594

19 See-Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority (1996)