

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM, AND
ARUNACHAL PRADESH)

PIL(suo motu) 66/2012, 67/2012, and WP(C) 648/2013 and 4860/2013

In re

Kaziranga National Park

-Versus-

- 1) Union of India represented by the Ministry of Environment of Forests.
- 2) State of Assam represented by the Chief Secretary.
- 3) Department of Environment and Forests, Government of Assam.
- 4) Commissioner and Secretary, Environment and Forests Department.
- 5) Principal Chief Conservator of Forests, Assam.
- 6) Director, Kaziranga National Park, Assam.
- 7) Divisional Forest Officer, Kaziranga National Park.
- 8) Millie Hazarika, Sr. Advocate.
- 9) Bhaskar Dev Konwar, Sr Advocate
- 10) Anup Kumar Das
- 11) Pradip Khataniar
- 12) Apurba Sarma
- 13) Saurav Kataki
- 14) Brajendra Mohan Choudhury
- 15) PC Goswami
- 16) Bisakha Datta Goswami
- 17) Indraneel Choudhury

- 18) Angshuman Bora
- 19) Ranjit Kumar Goswami
- 20) Randeep Sharma
- 21) Dharmendra Kumar Sarmah
- 22) Debajyoti Talukdar
- 23) Arnab Biswas
- 24) N. Ahmed
- 25) Arun Dev Choudhury
- 26) Anan Kumar Bhuyan
- 27) Rajesh Kumar Bhatra
- 28) Hrishikesh Sarma

Respondent.

In PIL 67/2012.

Sri Mrinal Saikia, son of Sri Ganga Dhar Saikia, Jugibari village, Nabheta post office, Golaghat police station, Golaghat district.

Petitioner.

-Versus-

- 1) State of Assam represented by the Chief Secretary.
- 2) The Commissioner and Secretary, Forests Department.
- 3) The Chief Conservator of Forests.
- 4) District Forest Officer, Golaghat district.
- 5) District Forest Officer, Nagaon district.
- 6) The Director, Wildlife Division, Kaziranga National Park.
- 7) Union of India, Ministry of Environment and Forests.

Respondent.

In WP(C) 648/2013.

- 1) Panpur Bonansal Go-palan Samittee, Sonitpur district.
- 2) Sri Lokraj Chetri, son of late Ratna Bahadur, Panpur district, Sonitpur.
- 3) Sri Laljit Chetri, Secretary, Panpur Bonanchal Go-palan Samittee, Sonitpur.

Petitioner.

-Versus-

- 1) State of Assam represented by the Chief Secretary.
- 2) The Secretary to the government of Assam, Forests Department.
- 3) The Principal Chief Conservator of Forests, Assam.
- 4) The Chief Conservator of Forests, Assam(Wildlife).
- 5) The Director, Kaziranga National Park.
- 6) The Divisional Forest Officer, Eastern Assam Wildlife Division, Bokakhat.
- 7) The Commissioner, Northern Assam Division, Tezpur.
- 8) The Deputy Commissioner, Sonitpur.
- 9) The Sub-divisional Officer, Biswanath Chariali.

Respondent.

In WP(C) 4860/2013

- 1) Sri Sunil Das, son of late Madhumohan Das, No. 1 Sildubi village, Golaghat district.
- 2) Sri Nunu Singh Karmakar, son of late Buta Karmakar, No.2 Sildubi village, Golaghat district.
- 3) Sri Nagen Saikia, son of late Molai Saikia, No. 2 Sildubi village, Golaghat district.
- 4) Sri Darsing Hansey, son of late Dhansing Hansey, Siljuri village, Golaghat district.
- 5) Sri Kashab Thakur, son of late Ghanashyam Thakur, Siljuri village, Golaghat district.
- 6) Sri Birsha Orang, son of late Tepo Orang, Halodhibari village, Golaghat district.
- 7) Sri Mihir Dutta, son of late Romon Dutta, Halodhibari village, Golaghat district.
- 8) Sri Chandra Dutta, son of late Bhim Dutta, Halodhibari village, Golaghat district.

Petitioner.

-Versus-

- 1) State of Assam represented by the Chief Secretary.

- 2) The Commissioner and Secretary to the government of Assam, Forests Department.
- 3) The Principal Chief Conservator of Forests(HOFF), Assam.
- 4) The Principal Conservator of Forests and Chief Wildlife Warden, Assam.
- 5) The Secretary and Commissioner to the government of Assam Welfare of Plain Tribes and Backward Caste Department.
- 6) The District Forest Officer, Golaghat.
- 7) The District Forest Officer, Nagaon.
- 8) The Director, Wildlife Division, Kaziranga National Park.
- 9) Union of India, Ministry of Environment and Forests.
- 10) The District Collector, Golaghat.
- 11) The District Collector, Nagaon.

Respondent.

PRESENT

HON'BLE THE CHIEF JUSTICE(ACTING) MR. K. SREEDHAR RAO
HON'BLE MR JUSTICE P. K. SAIKIA

For the petitioner : Sri S. Upadhyay Sri DP Chaliha, Sri TJ Mahanta, Smt. R Boro Bora - Advocate

For the respondent : Sri AC Buragohain
Advocate-General.
Sri KN Choudhury
Sr. Advocate
Sri SS Dey
Sr Advocate

For the Union of India : Sri SC Keyal
Asstt. Solicitor-General.

Date of hearing and judgment : 9.10.2015

JUDGMENT-AND-ORDER

Chief Justice(Acting) Mr. K. Sreedhar Rao.

The news concerning the illegal poaching of rhinoceros and other wild animals in the Kaziranga National Park(KNP) was widely reported in three English dailies ~ *The Telegraph* dated 28th and 29th September, 2012, *The Indian Express* dated 27th September, 2012, and *The Hindu* dated 27th September, 2012 .

2) This Court suo motu registered a PIL (no.66/2012) to inquire into the news report regarding illegal poaching and killing of wild animals in the KNP. PIL 67/2012 is filed by one Mrinal Saikia on the same subject matter with an additional relief of removal of human habitation and encroachment in the animal corridors in and around the KNP.

3) The eight residents of the second addition of the KNP filed 4860/2013 contending that before the second addition is added to KNP the requisite formalities as required under Sections 26A and 35 of the Wild Life(Protection) Act, 1972 and the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006(in short, the Forest Rights Act of 2006) have not been complied. In that view it is submitted that without formal compliance of the requisites of law the eviction of the residents is illegal. Therefore they seek a writ of mandamus directing the respondents to complete the process of settlement of rights under the Wildlife Protection Act in pursuance of the notifications issued as “additions” under the Wildlife Protection Act and to constitute statutory committees under the Forest Rights Act to ensure that no eviction takes place without the due process of law.

4) This Court by order dated 4th March, 2014 passed the following order on 4.3.2014 directing the Director of KNP to submit a detailed report about the geographical features, the flora and fauna, the animal life, the contributory reasons, which is aiding the poaching and illegal activities and also to give long-term solutions to remedy the ills affecting the Park.

“BEFORE
HON’BLE MR JUSTICE A. M. SAPRE, THE CHIEF JUSTICE
HON’BLE MR. JUSTICE A. K. GOSWAMI

04.03.2014.

(A.M.Sapre, CJ)

Today we have heard the views of Mr M.K.Yadav, Director, Kaziranga National Park, who is present in person and also heard the views of several learned counsel appearing for various organisations and stakeholders on the various problems faced by Kaziranga National Park and in particular with regard to poaching of rhinos which has caused serious concern to all.

Mr. Yadav, Director, Kaziranga National Park, submitted that sincere steps are being taken to curb poaching at any cost. He also submits that Government be granted around two months time to prepare high quality methodical report to suggest various proposals for curbing poaching on a permanent basis and also on related issues dealing with the Park and to preserve the endangered species "Rhino".

We express our serious concern about the incidences of poaching in Kaziranga National Park which have recently taken place and are taking place from time to time, we view it seriously. At any cost, in our view, the same must be stopped at the earliest to save the nature's most priceless and precious endangered species "Rhino". Indeed, it is our duty to preserve this God's gift to this world at any cost.

We grant two months time to the Director, Kaziranga National Park to submit the detail report on or before the next date of hearing suggesting therein the effective and remedial steps for implementation to curb poaching of "rhinos" in the Kaziranga National Park. He is at liberty to take help of all stakeholders, organisations, parks all over the world for preparation of report.

We request Mr Yada, Director, Kaziranga National Park, to remain present on every date of hearing to facilitate the hearing on the matter.

List on 26th of May, 2014".

5) The Director of the KNP pursuant to the said order has gone into the issue and submitted a detailed report in a book form containing 402 pages. The brief description of the contents of the book is as follows.

"Kaziranga, the home of the Greater One Horned Rhinoceros, faces certain threats which, if not adequately mitigated today, would become the cause of extinction of the rhinoceros in times of come. The Report dwells

upon the cause and possible solutions in some details. The factors identified as threat to the survival of the rhinos, other than poaching, are loss and fragmentation of habitat, lack to technology and strategic advantage over poachers, certain lacuna in policy and law and their implementation, challenges of growth and development on the fringes of the park and possible impacts of climate change and climate variations. The approach to mitigate the threats and ensure long term survival of Kaziranga is multi pronged and multi disciplinary with a series of immediate, short term, medium term and long term measures to be undertaken. Some of the suggested measures include erosion control, habitat improvement, extension of habitat, corridors retrofitting, upscaling of anti poaching infrastructure, security and surveillance in and around the Park, adopting a landscape based approach and constitution of a landscape authority for conservation and development of the areas, adopting a green growth approach for development in th landscape, adopting better management strategies such as organizational restructuring, increased staff strength, staff welfare and creating some key and necessary infrastructure, adopting better policies and strengthening further the legal provisions, and above all creating several secure habitats outside Kaziranga for the rhinos. The Report also identifies the actionables and classifies them into immediate, short term, medium term and long term time frames. A tentative budgetary estimate of the measures suggested is also provided at the end along with possible sources of funding. The Report projects financial estimates for a period of 10 years.

The Report is divided into three parts. Part I of the Report examines the key issues and challenges being faced in rhino protection. It also contains a brief description of the existing set up and provides the background information required for further analysis. Part I is divided into 9 chapters dealing with habit issues, human interface issues, policy and law, rhino population dynamics, rhino poaching, stakeholders' analysis and in brief about Kaziranga.

Part II of the Report contains the proposed solution framework and consists of 9 chapters. The solution framework is divided into habitat strategies, upscaling anti poaching infrastructure, Kaziranga Landscape Conservation and Development Authority. Management strategies, Kaziranga Landscape Green Growth Framework, Policy, Law, protocols and programme strategies, Time budget, and lastly Budget and finances. it also contains the references, some website links and bibliography along with citations for further reading.

Part III of the Report contains the annexures such as tables, photo-plates, soft version minutes of various meetings held and comments and suggestions received from various experts and stakeholders, and other annexures.

The Report finds that other than the poaching, there are other threats to the survival of rhino such as lack of adequate and secure habitat which is very badly in need of extension, retrofitting of the existing corridors, introducing SMART GUARD and SMART Communication and a series of technology interventions in short and medium term, green growth and green development opportunities for the fringe villages. On the policy side, it recommends amendments in the Wildlife(Protection) Act, 1972, challenges in the ways wildlife crime investigation is handled, organisational modifications, constitution of a Kaziranga Landscape Conservation and Development Authority to manage the entire landscape as a single unit consisting of the core, buffer and all the corridors and watersheds. The Report recommends initiation of the Rhino Range Expansion Project, setting up of key infrastructure and welfare of staff.

The actual implementation of the recommendations would require a series of ground surveys, in depth study, execution of Proof of Concepts, preparation of DPRs and Technical Feasibility Reports. The implementation would largely depend upon how strong is the institutional framework, availability of funds, support of the stakeholders, especially the local stakeholders, and the monitoring and feedback mechanisms put in place”

6) This Court passed the following order on 29.5.2015.

*“BEFORE
HON’BLE THE CHIEF JUSTICE(ACTING) MR. K. SREEDHAR RAO
HON’BLE MR JUSTICE P. K. SAIKIA*

29.5.2015.

Chief Justice(Acting)

The members of the high-power committee viz. Sri Mukti Gogoi, Commissioner(Home), Government of Assam; Sri PK Tiwari, Revenue Secretary, Government of Assam; Sri Anurag Agarwal, Inspector-General of Police(Border), Assam; Sri Ajay Kanojia, Director(NE-II), ministry of Home Affairs; and Sri DP Bankhwal, Inspector-General(Forest), NTCA Regional Office are directed to be present before this Court on 2.6.2015.

A copy each of this order be hand-delivered to Sri SC Keyal, Asstt. Solicitor-General and Sri RK Bora, govt. advocate”.

7) This Court passed the following order on 2.6.2015.

“BEFORE
 HON’BLE THE CHIEF JUSTICE(ACTING) MR. K. SREEDHAR RAO
 HON’BLE MR JUSTICE P. K. SAIKIA

2.6.2015.
 Chief Justice(Acting)

The members of the high-power committee are present before this Court. The members are told to do the counting of residences in the Kaziranga National Park area, which would include the first Addition to sixth Addition, and also to survey the population in the residential buildings, huts, etc. The committee shall also take biometrics of the people residing in the area and submit the report by 26th June, 2015.

Hand-deliver the copy of this order to the standing counsel for the Forest Department and the govt. advocate for compliance of this order”.

8) The high-power committee has gone into the issues and has filed a report, which is as follows.

“MINUTES OF THE 3RD MEETING AND FIELD VISIT OF THE HIGH POWERED CONSTITUTED BY THE HON’BLE GAUHATI HIGH COURT IN PIL 66/2012 HELD ON 24TH MAY, 2015 AT 8.00 AM AT KOHORA, KAZIRANGA NATIONAL PARK.

Members present:

List of the members present is annexed herewith.

The Commissioner & Secretary, Revenue & DM Department, Govt. of Assam chaired the meeting and the field visit. The field visit, in order to cover maximum area, started right at 8.00 AM in the morning starting from the 3rd Addition to Kaziranga National Park followed by the 2nd Addition to the Kaziranga National Park, part of the core areas of Kaziranga National Park 5th Addition to Kaziranga National Park, 1st Addition to Kaziranga National Park and the 6th Addition to Kaziranga National Park along with a view of the core of the Kaziranga National Park at places. The Committee also took stock of govt. land at Banderdubi and Deosur areas as well. The Committee was accompanied, among others, by the members of the Gauhati High Court Bar Association and the learned Counsels appearing on behalf of the Petitioners and Defendants, and officials from the Forest, Revenue and Police and Home Departments.

The members also interacted with the people residing in the addition areas, and visited the actual habitation sites where the people were currently residing or had erected huts etc. The Committee visited

Siljurigaon, Methoni Bagicha, No. 1 Sildubigaon, No. 2 Sildubigaon, Periphery of Kaziranga Nankegaon, Hatikhuli TE areas and the Haldibari in the 2nd, 3rd, and 5th Additions to KNP and khuties in the 6th Addition areas. After taking the stock of the ground situation and after much deliberation, the following decisions were arrived at:-

- 1. List of the encroachers/settlers on the government land in the vicinity of Kaziranga National Park, its 6th Additions and the NH37 (Jakhlabandha to Bokakhat) to be prepared by the respective Deputy Commissioners and it should be given to SP (border) within one month. The SP (Border) shall examine the same and take appropriate action within 30 days, such as handing over cases to the Hon'ble Foreigners' Tribunal, if required.*
- 2. Village Land Bank must be re-verified within 15 days i.e. till 10th of June, 2015 by the respective Revenue Officers as per direction already issued by the Revenue & DM Department, on priority for all the areas falling in the vicinity of the Kaziranga National Park and its Additions.*
- 3. **Banderdubi and Deosur:** A detailed in-depth survey of individuals/families occupying Government land along with land status report is to be prepared by the concerned DC/SDO (Civil) and it should be provided to police within one month for taking further action.*
- 4. The Committee observed that the general impression after the field visit, in the 2nd Addition areas, was that most of the constructions were new dating back from last one to ten years and temporary and semi permanent in nature, which have been erected with an apparent intention of bargaining for land elsewhere.*
- 5. The Committee observed that persons, mostly in the 3rd Addition areas, were share croppers from across the NH 37 and other nearby areas and settled in last 5 years in temporary structures. The land mostly belonged to persons far away from the Addition area.*
- 6. The Committee observed that a large numbers of annual patta had been issued in 2nd Addition to KNP, 3rd Addition to KNP and the 5th Addition to KNP. The DC Golaghat shall launch an intensive drive to verify each and every annual patta holder and submit report within 30 days whether they are still in possession of the land. NR cases should be registered against the non occupant Patta holders.*
- 7. The Committee observed that in the 2nd Addition to KNP, land was also procured by the Government from the Hatikhuli Tea Estate to make it part of the Kaziranga National Park and the Tea Estates was paid too for this transaction. Hatikhuli has not removed the structures or its persons from the said portion of the 2nd Addition. The DC Golaghat was directed to verify the records and take*

immediate action to free the land from encroachment by the Tea Estate and the management of the Tea Estate, if necessary.

8. *In the 6th Addition, the semi-permanent, make-shift bamboo structures called khutis were observed to have been put up recently. It could be sensed on talking to the encroachers that many of them had mischievously been planted by some vested interests. The DC, Sonitpur was directed to remove them from the Addition areas without any further delay.*
 9. *The Committee noticed that a compensation package to the permanent Patta holders in the 2nd, 3rd and the 5th Additions to KNP has been submitted to the R&DM Department in 2013. Since two years have passed the DC Golachat was asked to verify the list of the patta holders in these addition areas to facilitate the decision and rehabilitation package.*
 10. *After the Addition areas are made encroachment free, the Forest Department would construct appropriate structure to mark the areas. Boundary pillars which can be spotted from a distance should be fixed on all corner points of the Park boundary and the Addition areas immediately after joint survey with the Revenue authorities.*
 11. *The Committee decided that it will review the progress of the work in the last week of June, 2015.*
- The meeting ended with vote of thanks from the Chair.*

(P.K. Tiwari, IAS)

*Commissioner & Secretary to the Govt. of Assam,
Revenue & DM Department
&
Chairman, High Powered Committee”*

- 9) It is said that the entire area of KNP including 1st to 6th additions measures at 884.44 square kilometres and the possession of the land in 2nd addition has also been handed over, but there are some encroachments. With regard to the 3rd and 5th Additions, the preliminary notification and inquiries required under the law are held, but no final notification is issued.

10) This Court passed the following order on 15.7.2015.

“BEFORE
HON’BLE THE CHIEF JUSTICE(ACTING) MR. K. SREEDHAR RAO
HON’BLE MR JUSTICE P. K. SAIKIA

..O R D E R..

15.07.2015.
(K. Sreedhar Rao, CJ(Acting))

Mr. N Dutta, learned Senior Counsel for the petitioners submitted that in the 3rd Addition, vide report, dated 05.08.2014, the number of families living by encroachment was 32. In the current report, 82 families are shown to be now pattadars. It is submitted that from the report it is seen that the Government is encouraging the encroachers by granting pattas.

It is said that the Bandardubi village, 183 families are living as encroachers and in Deuchur Chang village 122 families are living as encroachers, thus, total 305 families are living as encroachers. The said families have been given the building materials under Indira Awas yojana, a Government Scheme, for building houses. It is also said that LP Schools, Madrassas, Iddgah and Masjids are constructed in the villages. It is argued that the Government is encouraging the encroachments and facilitating their permanent settlement.

The above material discloses that there appears to be some improprieties and illegalities in granting pattas and legalizing the encroachments. It is, therefore, directed that the Revenue Authority, particularly, the Deputy Commissioners of Nagaon, Sonitpur and Golaghat to furnish the copies of all the pattas granted to the persons in 3rd Addition.

In so far as the Bandardubi and Deuchur Chang villages are concerned, the Deputy Commissioner, Nagaon shall evict the encroachment of Government land from the said two villages on or before 12-08-2015, if necessary with effective police assistance.

The Superintendent of Police(Border), Nagaon shall also make verification of the Nationality of the encroachers in the 2nd, 3rd and 5th Additions. The compliance report to be submitted by 12-08-2015.

The biometric of all the residences in 2nd, 3rd and 5th Additions is to be taken and report to be submitted by 12-08-2015.

Hand delivery of the order to be given to the Assistant Solicitor General of India, Government Advocate, Assam, the Standing Counsel, Forest Department and the Director, Kaziranga National Park.

Call the matter on 12-08-2015”.

11) This Court has directed the Deputy Commissioners to evict the residents from the park area including the 2nd, 3rd, 5th, 6th additions and also the residents of Bandardubi, Deuchur Chang and Palkhowa.

12) The petitioners in WP(C) 648/2013 contend that the petitioners are grazing cattle in the lands in the sixth addition and without settlement of compensation they should not be evicted.

13) IA 1261/2015 and 1262/2015 are filed by the applicants to be impleaded in PIL 66/2012. It is the contention of the applicants that they are patta-holders and lawful residents in Bandardubi and Deuchur Chang villages. The said villages are revenue village, which do not form part of the KNP, therefore, they cannot be evicted.

WP(C) 4860/2013

14) Shri S. Upadhyay, the learned counsel for the petitioner in WP(C) 4860/2013, urged the following contentions to resist the eviction process against the petitioners.

(i) There has been no valid acquisition of the said villages as contemplated under Section 26A and 35 of the Wild Life(Protection) Act, 1972, besides there is no compliance of the requirements of the Forest Rights Act of 2006. The authorities are evicting the petitioners who are the lawful residents and patta-holders of the lands.

(ii) The provisions of sub-Section (3) of Section 26A of the Wild Life(Protection) Act, 1972, earlier to the amendment dated 1st April, 2003, insisted that there should be a resolution passed by the legislature to authorise for addition or alteration of the boundaries of a National Park as a condition precedent. In this case, the unamended provisions prior to 1st April, 2003 will apply. Since there is no resolution passed by the Legislature, the entire acquisition proceedings are illegal.

(iii) Section 35(5) of the Wild Life(Protection) Act, 1972 declares that no alteration of the boundaries of at National Park by the State Government shall be made except on a recommendation of the National Board. In this case, there is no recommendation of the National Board is obtained. Hence, the acquisition proceedings are illegal.

(iv) There has been no final notification issued as required under sub-Section (1) of Section 35 of the Wild Life(Protection) Act, 1972 in respect of the second, third and fifth Additions of the KNP.

(v) The definition of “forest land” under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 includes the Sanctuaries and National Parks. Section 6 of the Act protects the rights of the Scheduled Tribes and other traditional forest dwellers. The Act contemplates constitution of gram sabhas and forest rights committees. The said gram sabhas and forest rights committees have to scrutinise and record the rights of forest dwellers and Scheduled Tribes living in the forest. In the present case, no such gram sabhas or forest committees are constituted. The petitioners are all residents of the forest area since the 1950s and pattas have been granted in their favour in the year 1962. The summary eviction of the petitioners cannot be done without inquiry and without ascertaining their rights over the land in question.

(vi) The affidavit of the Director filed before the Supreme Court in WP(C) no. 337/1995 dated 23rd January, 2006, it is mentioned that for the proposed third addition of Kaziranga National Park, the preliminary notification under section 18 has been issued. The provisions of Section

18 pertains the acquisition of land for the purpose of sanctuary and not for the National Park. Therefore, without there being proper notification for acquisition of land for National Park, the entire acquisition proceedings are illegal

(vii) The minutes of the meeting held on 18.1.2013 pursuant to the order of this Court dated 8th January, 2012 wherein there is a mention that the ADC(Revenue), Golaghat has stated that since no money has been acceptable/handed-over by/to anyone, “the land acquisition process in respect of the patta lands under the 2nd, 3rd and 5th addition area is not deemed as completed as per the land acquisition Act”.

(viii) The sub-Section (4) of Section 35 of the Act contemplates that before eviction all claims of the petitioners have to be disposed of by the state government and thereafter the final notification has to be published regarding the vesting of the land. Since no such procedures have taken place, without a valid acquisition the petitioners cannot be evicted.

15) The petitioners 4 and 5 claim that their ancestors and they are residing in Siljuri village since the time of independence and they have

been granted the *myadi patta*. Petitioner 7 and 8 also claim that they are residing since the 1950s on the land covered under the fifth addition by paying *touzi* to the government. In the light of the statements made by the Additional Deputy Commissioner, Golaghat the process of acquisition as required under Section 35(4) of the Land Acquisition Act, 1894 having not been complete any premature eviction would be illegal.

16) The learned counsel relied on the decisions of the Supreme Court in *Pradeep Krishen v. Union of India and others*(AIR 1996 SC 2040). In paras 5 and 17 of the judgment the following observations are made.

“5. The deponent further states that there are 11 National Parks and 33 Sanctuaries in the State of Madhya Pradesh, out of which 3 National Parks are finally notified under the National Park Act, 1955 and one Sanctuary is notified under the Act as amended in 1991, but the final notification is yet to be issued. The remaining 8 National Parks and 32 Sanctuaries were notified from time to time under the Act prior to its amendment in 1991. In these National Parks and Sanctuaries, proceedings under Sections 19 to 25 of the Act were not taken to acquire the rights of the people. That is why they were not finally notified. The State Government could not have taken away the rights of the tribals and villagers dependent on minor forest produce without acquisition of those rights after payment of compensation. It is for this reason that the final notification under Section 26A could not be issued unless provision for payment of compensation and rehabilitation were simultaneously made. So also, in regard to National Parks, the final declaration could not be issued under Section 35 of the Act for the same reason”.

17. On a plain reading of these provisions, it is, therefore, obvious that the procedure in regard to acquisition of rights in and over the land to be included in a Sanctuary of National Park has to be followed before a final notification under Section 26A or Section 35(1) is issued by the State Government. In the instant case, it is not the contention of the petitioner that the procedure for the acquisition of rights in or over the land of those

living in the vicinity of the areas proposed to be declared as Sanctuaries and National Parks under Section 26A and 35 of the Act has been undertaken. It was for this reason that the order of 28.3.1995 in terms stated that since no final notification was issued under the said provisions, the State Government was not in a position to bar the entry or villagers living in and around the Sanctuaries and the National Parks so long as their rights were not acquired and final notifications under the aforesaid provisions were issued. It is, therefore, not possible to conclude that the State Government had violated any provision of law in issuing the notification dated 28.3.1995”.

17) The learned counsel relied on the decision of this Court in Jaladhar Chakma and etc. etc. v. The Deputy Commissioner, Aizawl, Mizoram and others(AIR 1983 Gau 18).

WP(C) 648/2013

18) The learned counsel for the petitioner in WP(C) 648/2013 has submitted that the documents produced by the petitioner disclose that they have been permitted to graze and they have paid the revenue to the government. Petitioners are exercising rights for the past 50 to 60 years. Therefore without payment of compensation they cannot be summarily evicted.

IA 1261/2015 and 1262/2015.

19) The counsel for the intervening applicants in IA 1261/2015 and 1262/2015 has submitted that Bandurdubi and Deurchur Chan villages are the two villages that have been declared as revenue village by the government therefore it does not fall within the area of the National Park hence the eviction of any villager from the revenue villages is illegal. In this regard the learned Advocate-General has supported the contention of the applicants that as per the revenue records the said two villages are revenue village and not part of the National Park. In respect of other areas it is submitted that the State will take necessary action to evict persons in accordance with law.

20) The counsel for the forest department has submitted satellite image of Kaziranga National Park taken on 2.5.2010(latitude 26.617007 degree and longitude 93.496956 degree) from the Google Earth which shows that there is no habitation in the third Addition. The image taken on 12.29.2011(latitude 26.586765 degree and longitude 93.316559 degree) shows that there is no habitation in the 5th Addition. The image taken on 1.17.2014(latitude 26.586765 degree and longitude 93.316559 degree) shows that there is habitation in the fifth Addition while image taken on

1.18.2014(latitude 26.617007 degree and longitude 93.496956 degree) shows that there is habitation in the third Addition.

21) With regard to Deurchur Chan village it is submitted that a notification was issued by the Government in the year 1916 declaring that the entire area of Deurchur Chan as reserve forest.

22) With regard to Banderdubi village it is submitted that the report of the Director discloses that the Government had given the land for social forestry for raising plantation in the year 1986. There has been no development of social forestry. In the beginning, there were only 5/6 families living as encroachers and as of now, it is said that the whole village has come up. The Banderdubi area is part of social forest land and also a tiger resort and animal corridor.

23) Per contra the learned Advocate-General has submitted that since no social forest was developed, the forest department gave the land to the government and accordingly, it has become the revenue village.

24) Learned senior counsel Shri KN Choudhury relied on the decision of the Supreme Court in T.N. Godavarman Thirumulkpad v. Union of

India and others[(1997) 2 SCC 267]. In para 4 of the judgment the following observations are made.

*“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise 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 recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works v. State of Gujarat*, *Rural Litigation and Entitlement Kendra v. State of UP* and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority*). The earlier decision of this Court in *State of Bihar v. Banshi Ram Modi* has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay”.*

25) The counsel also referred to the provisions of Section 2 of the Forest(Conservation) Act, 1980, which reads as follows.

“2. 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 purposes of this section” non-forest purpose” means the breaking up or clearing or any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture 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 wild-life, 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”.

26) In the light of the decision of the Godavarman(supra) case it is argued that the definition of “forest land” elucidated by the Supreme Court not only includes “forest” but also any area recorded as forest in the government record irrespective of the ownership, and this has to be understood for the purpose of Section 2 of the Forest Conservation Act, 1980, and that the provisions of the Forest Conservation Act, 1980 must apply clearly to all forests so understood irrespective of the ownership or classification”. In that view it is argued that the Banderdubi village which

is declared to be “social forestry” cannot be de-reserved and converted to revenue village. In that view of the matter the question of permitting any habitation in the said areas does not arise.

27) The government has produced the final notification issued in respect of the second Addition, which is dated 12th July, 2010 and the final notification issued in respect of the fourth Addition dated 10th April, 2012 and respect of third, fifth and sixth Additions final notification is yet to be issued.

28) The report of the Collector for the second addition of the KNP is as follows.

“Report of the Collector for 2nd Addition to the Kaziranga National Park.”

In response to our proclamation 147 claims were received. During the course of hearing of these claims some more people had approached stating that they could not file the claim in time. They were allowed to file the same even at a subsequent date much beyond the time fixed by the proclamation. Eleven claims were received thereafter making a total of 158 claimants. All these claim forms were registered as individual cases of each claimant and notices were issued to each of them individually to appear before the undersigned with the required evidence in support of their claim. For the convenience of the claimants the hearing was fixed at the Range Office, Kaziranga Range at Kohora. Four claimants who did not appear on the first occasion were given another notice to give them a second opportunity of presenting their cases. Whatever evidence was furnished by each claimant was recorded in the order sheet of each individual case, where after based on these claims and the evidence furnished, findings on all these claims has been recorded in each individual case and all claims have been disposed of.

The initial claim of a group of claimants was that they are erosion-affected people and land had been allotted to them by way of

rehabilitation. They could not, however, show any paper issued by any Government functionary making such an allotment of land as claimed by them. The matter was further checked from the Circle Officer, Bokakhat Circle who stated that no such allotment was ever made in the given area. Even the pattern of occupation of land does not support the claim that this land was ever allotted to the claimants by way of resettlement. Normally, resettlement is done in symmetrical plots either of 2 bighas or 5 bighas for each individual family, which are demarcated in a bigger piece of land. The land held by each family is thus equal and side by side. In the present situation the area of land occupied varies from person to person and is scattered all over the place. This clearly indicates that the claim that the land was allotted by way of resettlement is not correct.

Out of the 158 cases, the claimants in 116 cases, as listed out in Annexure-1, produced receipts of payment of Touzi Bahira. Some of these receipts were tampered while in all cases only the amount and the name of the person making the payment was recorded in the receipt. Normally, even in Touzi Bahira the Mouzadar allots a Touzi number to each occupant of the land and records the name of the encroachers. The receipts for payment of Touzi Bahira normally indicate the Touzi number and the person on whose behalf the money has been paid by the person paying the same. This issue is however only of academic interest. Touzi Bahira is a fine laid down under the Revenue Laws for encroachment and is not an evidence of title over the occupied land. In view of this all 116 claims, wherein the claimants had produced receipts of payment of Touzi Bahira, have been rejected.

Twenty-seven claimants as listed in Annexure-II have no paper in support of their claim over the land that they are occupying. They do not have even a Touzi Bahira receipt. Evidently they have no title over the land they are occupying and the claims were hence rejected.

Nine claimants as listed in Annexure-III are of claims wherein land has been used for non-Agricultural purposes. One of them is for a temple, two are self-styled public fisheries, one is a primary school, one is an anganwadi Kendra, two are self-help groups and two are public organizations. None of them had any document to show that they have any title over the land that has been occupied by them. The claims were hence rejected.

Six cases as listed in Annexure-IV were either duplicate, fictitious or the claimant did not appear. Two cases are of claimants who did not appear despite two notices having been issued to them. Three cases were found to be where claims were filed twice and separate cases had been registered. One case was found to be fictitious. Notices were issued twice in this but on neither occasion the person was found. The Gaon Burah has reported that there is no such person.

In conclusion, the claims in all 158 cases have been rejected, as no claimant had anything to establish title over the land.

Apart from the exercise taken up in response to the claims received, the status of land was checked from the land revenue record of the area. The land involved in the 2nd Addition is spread over four Revenue Villages of Bokakhat Circle. These are

- 1. Sildubi I*
- 2. Sildubi II*
- 3. Kaziranga Nanke Gaon.*
- 4. Hatikhuli Bagicha Gaon.*
- 5.*

In village Sildubi No. I there was 158B-3K-18L of land covered by annual pattas. This land was acquired vide Land Acquisition Case No. 4 of 89-90 of Golaghat. Since this land has been acquired by the above mentioned Land Acquisition proceedings, the said land has become sarkari and all rights and title of the pattadars has been extinguished. However, 31B-2K-0L of land out of this has not been handed over as the pattadars have refused to leave their land. This is an unauthorized occupation and no right or title on the land has remained after the acquisition. An area of 109B-0K-0L, being part of the acquired land was handed over to the D.F.O Eastern Assam Wild Life Division, Bokakhat on 21-06-2004. In the same village 31B-3K-16L of land was covered by periodic pattas. This land has also been acquired by the above mentioned Land Acquisition case of Golaghat. Though the land has not been handed over as the pattadars have refused to leave it, the land in question has become Sarkari as the same has been acquired by a Land Acquisition Proceedings and nobody has any title over the same. 1383B-0K-10L of land in village Sildubi No. I is VGR and PGR land. The entire land is already in the possession of the D.F.O, Eastern Assam Wild Life Division, Bokakhat. 126B-2K-8L is Government land of which 113B-4K-8L has been handed over to the D.F.O, Eastern Assam Wild Life Division, Bokakhat on 05-07-2005 while 12B-3K-0L is under encroachment.

The second village involved is Sildubi No. 2. This has 1395B-2K-17L of land, which entirely is Government land as per Revenue records and is under encroachment. All claims that have been received are from this village alone. As already stated these claims have been examined and rejected as it has been found that the claimants have no right or title over the land and they are only encroachers.

The third village involved is Kaziranga Nanke Gaon. This has 1388B-3K-18L. The entire land is Government land out of which 58B-3K-18L is under encroachment. The remaining 1330B-0K-0L

was handed over to the DFO, Eastern Assam Wild Life Division, on 05-07-2005 and is with the Forest Department.

The fourth village involved is Hatikhuli Bagicha Gaon. In this village 92B-2K-9L was periodic patta land which was acquired under the Land Acquisition Act 1894 vide Land Acquisition Case No. 5/89-90 of Golaghat. This land has been acquired and possession handed over to the D.F.O., Eastern Assam Wild Life Division, Bokakhat on 26-07-2004. Revenue records in the Chita had been corrected on 26-07-2004. Apart from this there is Government land measuring 378B-3K-13L possession of which has been handed over to the D.F.O., Eastern Assam Wild Life Division, Bokakhat on 05-07-2005 and Revenue records have been corrected accordingly.

It is thus clear from examination of Revenue records as well as after consideration and disposal of all claims received in respect of the 2nd Addition to the Kaziranga National Park that nobody has any legal right or title over any land that has been notified under Section 35(1) for the 2nd Addition to the Kaziranga National Park. The entire area involved is 4,955B-3K-9L of which 3,407B-1K-0L is already in the possession of the Kaziranga National Park. 1,548B-2K-9L is remaining, which has some encroachers. Once the notification constituting the National Park is issued, steps would need to be taken to remove these encroachments. It is recommended that the final notification under Section 35(4) be issued by the Government constituting the 2nd Addition to the Kaziranga National Park under the Wild Life (Protection) Act 1972 (Central Act NO. 53 of 1972).

The case records of all 158 claim cases and the file concerning the correspondences in connection with the 2nd Addition to the Kaziranga National Park are being transferred to the Director, Kaziranga National Park, Bokakhat for safe custody.

(H.M. Cairae)

*Principal Secretary to the Government of Assam,
Higher Education Department & Collector for 2nd
Addition to the Kaziranga National Park. Dispur.”*

OPINIONWP(C) 4680/2013

29) The petitioners 1, 2 and 3 claim to be residents of Sildubi I and II villages. They contend that they are patta holders and their claim has not been settled. The said contention appears to be palpably untenable. The report of the Collector extracted supra disclose that enquiry was held in respect of second addition. There were 158 claims. All the claims have been decided. It was found in the inquiry that nobody had any right or title over the land. The lands were taken over vide land acquisition case 4 of 89-90. The possession was delivered to the forest wildlife division. On 26.1.2004 and 5.1.2005. The report further discloses that some of the residents despite the adjudication of their claims refused to leave. The expert committee report also corroborates this fact that in the areas in the second addition there were temporary structures and recently constructed one. This material clearly indicates that the petitioners 1 to 3 have no right over the land in any manner.

30) The petitioners 4 and 5 are said to be the residents of to the third and fifth additions. The contention of the forest department that the claims are adjudicated by the inquiry authority. The averments made in

para 11 of the writ petition corroborate the contention that the claims are adjudicated since the para 11 states that the compensation amount of Rs 13,27,046/- is deposited with the Sub-divisional Officer. The said averments suggest that the petitioners have knowledge of the inquiry.

31) The petitioner 6 to 8 are said to be residents of Haldibari village, which is a part of the fifth addition. The authorities have fully complied with the requirements of law and claims have been settled. Only formal issuance of final notification for third and fifth editions remains. The petitioners cannot claim any right over the land that has been acquired and compensation is determined and deposited. Petitioners have suppressed the material fact. They have not stated anything about their participation in the inquiry and the rights they have over the land in question.

32) The contention that for acquisition before amendment of Section 26A in the year 2003 a resolution by the legislature was mandatory for issuance of preliminary notification. Hence the entire proceeding is bad in law. The proceedings for acquisition, be it under the Wild Life Act or the Land Acquisition Act, are one and the same. The petitioners of the second addition after conclusion of the proceedings and handing over

possession belatedly after nine years cannot challenge that their claims are not adjudicated and there is no valid notification for acquisition.

33) With regard to the contention that formalities under the Forest Act is not completed does not hold water because the petition averments do not anywhere assert or disclose that the petitioners are Scheduled Tribes or other traditional dwellers of the forest. In the absence of such pleadings the claim of rights under the Forest Rights Act does not arise.

34) The decisions cited by the counsel for the petitioners have no application to the facts situation of the instant case. In the cited case the petitioners have asserted their rights to collect tendu leaves. In this case the fact situation is totally different. The acquisition and eviction of human habitation is being done for protecting the wildlife which is exposed to rampant poaching. The authorities have complied with all the formalities. Maybe, there may be some technical lapses but nonetheless the procedures of inquiry conducted by the Collector is in full consonance with procedures laid down under the Land Acquisition Act. Merely because there are some technical lapses in issuing preliminary notification should not be a cause to undoing the result of the acquisition proceedings. If technical views are taken there would be substantial damage to the wildlife and national interests.

WP© 648/2013

35) With regard to the contention of the petitioners it is submitted that the petitioners have only grazing rights and they are said to be residents of the sixth addition. The rights granted to them are only in the nature of licence and for a larger public interest petitioners are prevented from grazing. They cannot have any legal right. Petitioners can approach the competent authority to establish their rights for seeking compensation. In the inquiry to be conducted before issuance of the final notification the petitioners can participate and seek compensation. Hence the relief sought in the petition that they should not be prevented until compensation is paid is untenable.

IA 1261/2015 and 1262/2015

36) The applicants are seeking to get impleaded to challenge the eviction proceedings. It is the case of the applicants that they are residents of Deocharchang and Bandardubi which are revenue villages within the territory of KNP. The claim of the petitioners is also supported by the government. However we are unable to agree with the submissions

since Deocharchang is declared by notification in 1916 that it is a reserve forest. The government gave the lands in Bandardubi for social forestry in the year 1986. There was no development of social forestry. The illegal encroachment started and a village has come up by encroachment. It is the stand of the government that since social forestry is not developed the lands of Bandardubi was given back to the government and the lands are dereserved and shown as revenue village.

37) The Supreme Court in Godavarman case supra has laid down a ratio that the forest land occurring in Section 2 of the Forest (Conservation) Act, 1980 not only includes "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has been understood for the purpose of Section 2. The provisions of Section 2(i) of the Forest Conservation Act, 1980, mandates that no State Government or other authority shall make, except with prior approval of the Central Government, de-reserve any forest area. When once the Government has given the land for social forestry it is impermissible for the Government to dereserve and make it a revenue village without consent of the Central Government besides the said area is tiger reserve and animal corridor.

38) The report submitted by Director, Kaziranga National Park on the orders of this Court also states, at page 167, that Bandardubi village is animal corridor. In that view, the claim of the persons, who want to get impleaded that they should not be evicted from Bandardubi and Deocharchang is untenable. In so far as these two villages are concerned, one is declared to be reserved forest and other is declared to be the social forestry and animal corridors. The human habitants of those areas cannot claim right of occupation or possession.

39) The individual claims for a handful of persons is in conflict with the public and national interest. There have been persistent and repeated reports of poaching of rhinoceros, elephants and other wild animals. It is irresistible inference that the habitants in KKP area would fall in suspect group and they would be well-acquainted with the areas and animal movements, therefore they would alone be in a position to do poaching successfully or abet poaching by others. The concept of national park in the Wild Life Act contemplates that there should be no human habitation.

40) Article 48-A of the Directive Principles of the Constitution of India mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 51-A(g) fastens the fundamental duties on the citizens to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

41) In the face of the Constitutional obligations on the part of the State with a corresponding duty on the part of the citizens it would be highly untenable on the part of the petitioners to take technical pleas and expose the wild life to a great danger of extinction.

42) The Supreme Court in *Union of India and another v. Redeppa and another* [(1993) 4 SCC 269] has laid down the following ratio.

“True the jurisdiction exercised by the High Court under Article 226 or the tribunal is not as wide as it is in appeal or revision but once the Court is satisfied of injustice or arbitrariness then the restriction, self imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice”.

43) In the instant case any rigid and technical view would only harm and endanger the wildlife of the KNP. The jurisdiction of this Court under 226 of the Constitution is quite wide. The petitioners who have approached this Court have no right over the land and their claims have been adjudicated. The fact that the final notification in respect of the 3rd and fifth additions is not issued is not a ground for the petitioners to

overstay on the land when their claims are adjudicated. There is also provision under the Land Acquisition Act that in urgent situations the possession of land is taken and later on adjudication of compensation procedures are followed. In that view of the matter even if the final notification is not issued since the claims of the persons of third and fifth additions are adjudicated they cannot claim right to stay in the land. If the Court, as argued by the petitioners, takes a technical view it would only endanger the wildlife in the KNP and there would be unabated acts of poaching. Hence keeping in view the interests of the KNP, which is a World Heritage Site, we are not inclined to accept the contention of the petitioners.

44) It may be that the recommendation of the National Board is to be taken, still it is open to the government to approach the National Board for its approval. We don't think that the National Board can take any different view than the one taken by the government for expanding the area of the KNP. Keeping in view the larger interests of the public and the Constitution mandates, the claim of the petitioners in WP(C) 4860/2013 is held to be untenable and accordingly the writ petition is dismissed. Similarly the claim of the applicants in IA 1261/2015 and 1262/2015 for the reasons stated above are dismissed. The claim of the petitioners in WP(C) 648/2013 is rejected. The Deputy Commissioners of Golaghat,

Sonitpur and Nagaon are directed to take expeditious steps to evict the inhabitants in the second, third, fifth and as well the six additions of the Kaziranga National Park, including Deurchur Chang, Banderdubi and Palkhowa, within one month.

JUDGE

CHIEF JUSTICE(ACTING)

na/